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VIA ELECTRONIC FILING

Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**RE: 2024 Solar Resource Procurement Request for Proposals to Procure New Solar and Solar Paired with Storage Resources
Docket Nos. E-2, Sub 1340 & E-7, Sub 1310**

Dear Ms. Dunston:

Pursuant to the North Carolina Utilities Commission's ("Commission") *Order Adopting Initial Carbon Plan and Providing Direction for Future Planning* ("Carbon Plan Order") issued on December 30, 2022, in Docket No. E-100, Sub 179 and *Order Granting Extension, Establishing Procedures, And Permitting Use of Resource Solicitation Cluster And Elimination of Red Zone Expansion Plan Cost Adder* issued in the above-captioned dockets, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP" and together with DEC, the "Companies" or "Duke Energy") hereby provide this 2024 Solar Resource Procurement Pre-Issuance Proposal filing ("Proposal") to the Commission in advance of finalizing the Companies' 2024 Solar Resource Procurement Request for Proposals ("2024 RFP") to procure new solar resources and solar paired with storage ("SPS") resources.

As identified in the Companies' 2023-2024 Carbon Plan and Integrated Resource Plan ("CPIRP") now before the Commission in Docket No. E-100, Sub 190, the near-term development and procurement of new solar and SPS is a key component of the Companies' orderly energy transition strategy to meet the objectives of Session Law 2021-165 ("HB 951") in a least cost manner that maintains or improves reliability on the Companies' systems across both North Carolina and South Carolina. The Companies are developing the 2024 RFP to procure solar and SPS resources to meet system-wide renewable energy needs consistent with the Carbon Plan Order and proposed 2023-2024 CPIRP as well as the Companies' evolving resource planning needs in South Carolina, identified via South Carolina's integrated resource planning process and the Companies' proposed 2023 IRP now before the Public Service Commission of South Carolina. Similar to the currently-open 2023 RFP, the Companies have engaged stakeholders in the RFP development

process¹ and now plan to work with the 2024 RFP Independent Evaluator, Charles River Associates, Inc. (“IE” or “CRA”), to engage market participants on the draft RFP itself through an approximately 60-day pre-issuance comment process commencing later this month. Duke Energy, with input from the IE and stakeholders, then plans to finalize the 2024 RFP by late June and to file the final RFP along with the IE’s pre-solicitation report with the Commission on June 28, 2024.

I. Overview of 2024 RFP Pre-Issuance Proposal Filing

The 2024 RFP is the Companies’ third system-wide annual solar procurement under the new Carbon Plan Order execution planning framework² and aligns with the Companies’ proposed 2024-2026 Near-Term Action Plan and overall Execution Plan now before the Commission in the 2023-2024 CPIRP proceeding. As further addressed in the Proposal, the 2024 RFP’s planned 1,585 MW³ procurement target of new solar resources and 400 MW of paired battery energy storage represents the Carolinas largest-ever solar and solar paired with battery energy storage (“SPS”) procurement and will seek a balanced portfolio of utility-owned and controllable PPA solar and SPS resources, targeting procurement, development and commercial operation of new projects by 2029.

The ongoing development of the 2024 RFP builds on the Companies’ recent development and execution of a number of highly competitive solar RFPs and reflects the Companies’ significant ongoing efforts to engage market participants and to develop a robust and commercially reasonable RFP structure that will procure the highest ranked, lowest cost solar and SPS resources for customers. This Proposal presents the Commission with an overview of the key provisions of the Companies’ planned 2024 RFP and a roadmap for the Companies’ plans to finalize the 2024 RFP for filing with the Commission on June 28, 2024 and to open the 2024 RFP bid window on or about August 15, 2024. Pending any further guidance from the Commission, the Companies plan to finalize, administer and report to the Commission on the results of the 2024 RFP in a similar fashion to the ongoing 2023 RFP.⁴

¹ The Companies have held two robust and productive open stakeholder engagement sessions as well as a number of smaller engagement meetings in advance of developing this 2024 RFP Proposal. The first stakeholder engagement session was held on January 30, 2024 and the second meeting was held on March 14, 2024.

² Carbon Plan Order at 33 (identifying the Commission’s ongoing “execution oversight function” relating to implementation of the Carbon Plan).

³ As described in Section I.d of the Proposal, the 1,585 MW target procurement volume includes 1,350 MW of the 2,350 MW of new solar identified as needed and selected by the Commission in the 2022 Carbon Plan Order to be placed in service by 2028, 85 MW of additional solar-only resources targeted for procurement to replace terminated HB 589 CPRE MW that were assumed to be installed prior to the 2026-2028 NTAP period, as well as an additional 150 MW of incremental solar to recognize the potential for future attrition of PPA terminations, as supported in the 2023-2024 CPIRP updated NTAP.

⁴ Appendix A to the Proposal presents a comprehensive schedule and timeline of activities for the planned 2024 RFP.

II. Contents of 2024 RFP Proposal Filing

The Companies are providing the Commission the following attachments to inform the Commission's understanding of ongoing development of the 2024 RFP:

- Attachment 1: 2024 Solar Procurement Pre-Issuance Proposal
- Attachment 2: 2024 RFP Independent Evaluator Scope of Work
- Attachment 3: Redline of Solar Only PPA to 2023 RFP pro forma PPA
- Attachment 4: Redline of SPS PPA to 2023 RFP pro forma SPS PPA
- Attachment 5: 2024 Solar Procurement Pre-Proposal Stakeholder Engagement Process Meeting Materials

As identified in the Proposal, the Companies have not made material changes to their previously-filed SPS Terms and Conditions filed in advance of the 2023 RFP and, therefore, have not updated those documents for filing with the Commission for purposes of the 2024 RFP.⁵

III. Conclusion

The Companies look forward to continuing to work with the IE, Public Staff, as well as market participants and other stakeholders in both North Carolina and South Carolina to finalize and then issue the 2024 RFP. Over the next several months, the Companies plan to finalize the 2024 RFP for filing with the Commission in late June. At that time, the IE will submit its Pre-Solicitation Report to the Commission and the Companies will then open the 2024 RFP bid window on or about August 15, 2023.

Thank you for your assistance in this matter. Please do not hesitate to contact me should you have any questions.

Sincerely,



Hayes J. Finley

Enclosures

⁵ See Proposal at I.J.

VERIFICATION

STATE OF NORTH CAROLINA)	DOCKET NO. E-2, SUB 1340
)	DOCKET NO. E-7, SUB 1310
COUNTY OF WAKE)	

I, Maura Farver, State Energy Policy Director for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC do solemnly swear that the facts stated in the foregoing 2024 Solar Resource Procurement Request for Proposals for Solar and Solar Paired with Storage and all attachments incorporated by reference, insofar as they relate to Duke Energy Carolinas, LLC and Duke Energy Progress, LLC are true and correct to the best of my knowledge and belief, and that said statements constitute a complete statement of the matters to which they relate.

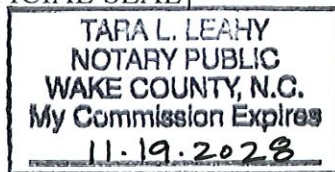
Maura Farver
Maura Farver

Subscribed and sworn to before me this
12 day of April, 2024

Tara L. Leahy
Notary Public

My commission expires: 11.19.2028

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Attachment 1

2024 Solar Procurement Pre-Issuance Proposal

**Duke Energy Carolinas, LLC
Duke Energy Progress, LLC
Docket No. E-2 Sub 1340
Docket No. E-7 Sub 1310**

2024 Solar Procurement Program Pre-Issuance Proposal

The *Order Adopting Initial Carbon Plan and Providing Direction for Future Planning* (“Carbon Plan Order”) directed the Companies to target procurement of 2,350 MW of new solar and 600 MW of paired storage during the 2023-2024 period and further directed the Companies to engage stakeholders regarding development of a competitive, least cost solar procurement program framework and to then file a proposal to procure new solar generation to be placed in service by 2028. The Commission also directed that the 2024 solar procurement program should be designed to utilize a volume adjustment mechanism (“VAM”) to capture the potential for increased near-term solar procurement at lower costs for customers relative to current resource planning assumptions.¹

The 2024 Solar and Solar Paired with Storage Resource Procurement request for proposals (“2024 RFP”) is the Companies’ third system-wide annual solar procurement under the new Carbon Plan Order execution planning framework and aligns with the Companies’ proposed 2024-2026 Near-Term Action Plan and overall Execution Plan now before the Commission in the 2023-2024 Carbon Plan and Integrated Resource Plan (“CPIRP” or the “Resource Plan”) proceeding.² The ongoing development of the 2024 RFP builds on the Companies’ recent development and execution of solar RFPs and reflects the Companies’ significant ongoing efforts to engage market participants and to develop a robust and commercially reasonable RFP structure that will procure the highest ranked, lowest cost solar and solar paired with battery energy storage (“SPS”) resources for customers. This Pre-Issuance Proposal presents the Commission with an overview of the key provisions of the Companies’ planned 2024 RFP and a roadmap for the Companies’ plans to finalize the 2024 RFP for filing with the Commission on June 28, 2024, and to then open the 2024 RFP bid window on or about August 15, 2024. Appendix A to this Attachment 1 provides the Commission a comprehensive timeline of planned 2024 RFP activities.

I. Overview of Key Provisions of Planned 2024 RFP

The 2024 RFP builds on, and will be substantially similar to, the 2023 Solar Procurement Program (“2023 RFP”). Specifically, the 2024 RFP will solicit both Utility Ownership Track (“UOT”) and controllable power purchase agreement (“PPA”) solar and SPS assets and will include an approximately 60-day pre-solicitation process followed by a 45-day solicitation bid window, multi-step bid evaluation process, and contracting periods. Similar to the 2023 RFP, the Companies plan to utilize the below framework to administer the 2024 RFP and to utilize a 2024 RFP-specific Resource Solicitation Cluster (“RSC”) after the 2024 Definitive Interconnection System Impact Study (“DISIS”) to provide interconnection cost estimates to evaluate bids in the 2024 RFP.

¹ Carbon Plan Order at 133 (Ordering Paragraph 21).

² Verified Petition for Approval of 2023-2024 Carbon Plan and Integrated Resource Plans of Duke Energy Carolinas LLC and Duke Energy Progress LLC, Docket No. E-100, Sub 190 (filed Aug. 17, 2023, as amended January 31, 2024).

a. 2024 RFP Pre-Issuance Development Schedule

Similar to the 2023 RFP and prior RFPs, the Companies are planning an approximately 60-day pre-issuance period for market participants to ask questions and to review and provide comments on the draft 2024 RFP and supporting documents, as the Companies and the RFP Independent Evaluator, Charles River Associates, Inc. (“IE” or “CRA”) work to finalize the 2024 RFP for issuance. The Companies will also host another stakeholder meeting during this period to discuss market participant feedback on the draft RFP and will then work with the IE to finalize the 2024 RFP for filing with the Commission and posting to the RFP website.

The Companies’ planned schedule for completing the 2024 RFP pre-issuance process is as follows:

2024 RFP Pre-Issuance Process	Dates
Stakeholder Meeting #1	1/30/2024
Stakeholder Meeting #2	3/14/2024
File RFP Proposal, Pro Forma Solar-only and SPS PPA	4/12/2024
Stakeholder review and feedback to Duke on draft RFP documents	Mid April – Mid May 2024
Stakeholder Meeting #3 to discuss market participant feedback	Early June 2024
IE Pre-solicitation report re: RFP documents filed with NCUC	6/28/2024
Final RFP document and PPA filed with NCUC	6/28/2024
Pre-solicitation bidders conference	Early August 2024
Bid window	8/15/2024 – 9/30/2024

As illustrated in the 2024 RFP pre-issuance process schedule, the Companies plan to file the final RFP with the Commission along with the IE’s Pre-Solicitation Report in advance of issuing the 2024 RFP to the marketplace in August 2024.

b. Independent Oversight of 2024 RFP to Ensure Fairness and Transparency

To support management of the 2024 RFP effort, as well as to assure a fair and transparent procurement process, the Companies are engaging CRA as IE for the 2024 RFP. CRA is currently the IE for the 2023 RFP, and was also the IE for the 2022 SP. The Companies introduced CRA as the IE during the January 30, 2024, Stakeholder Meeting #1 and have not received any negative feedback regarding CRA’s qualifications, experience, or ability to perform its duties as IE for the 2024 RFP.

The IE will assist DEC and DEP in managing the 2024 RFP and procuring the highest ranked, lowest cost resources by facilitating a fair and competitive process and ensuring that all bids are evaluated in a transparent and non-discriminatory manner. As detailed in Attachment 2: Duke Energy Independent Evaluator Scope of Work for 2024 Solar Procurement (“IE Scope of Work”), the IE will develop a 2024 RFP webpage³ and have a significant role managing the pre-issuance market participant engagement process. Throughout the 2024 RFP, the IE will be available and responsive to market participant inquiries, providing an option for direct inquiries via the 2024 RFP website, similar to the 2023 RFP and prior procurements. The IE will also be responsible for reviewing the draft 2024 RFP and providing input to the Duke Energy evaluation team to ensure reasonable transparency and consistency with accepted industry standards and practices for competitive solicitations. Prior to issuance of the 2024 RFP, the IE will provide written feedback to the Duke Energy evaluation team on the draft RFP and also develop a “Pre-Solicitation Report” for filing with the Commission at the time Duke Energy files its final RFP with the Commission. The IE Pre-Solicitation Report is targeted to be filed on or about June 28, 2024, in advance of the bid window opening in mid-August 2024.

During the bid evaluation process, the IE will be responsible for the initial review of proposals submitted into the 2024 RFP to ensure bids meet all applicable bidder requirements set forth in the RFP. The IE will also perform an independent evaluation of both utility self-developed and third-party developed proposals submitted into the 2024 RFP to ensure the Companies’ evaluation team selects proposals in a fair and unbiased manner that results in the highest ranked, lowest cost portfolio of new solar and SPS resources that minimize long-term costs and risk for customers. The Companies will provide the IE with all data and information necessary to perform a thorough examination of the bidding process and bids received through the 2024 RFP similar to the 2023 RFP and 2022 SP. Throughout the 2024 RFP, the IE will also be available to the Public Staff to provide updates on the ongoing RFP evaluation process. At the conclusion of the 2024 RFP, the IE will be required to file a “Post-Solicitation Report” with the Commission to provide its independent assessment and certification that the 2024 RFP solicitation process was conducted in an open, transparent, and nondiscriminatory manner and to provide its independent assessment of the reasonableness of the results of the 2024 RFP.

Similar to the 2022 SP and 2023 RFP, the 2024 RFP will establish proposal fees and winner’s fees that will be used to fund the IE’s services. The Companies will manage the contract terms with the IE and have provided a copy of their contract with CRA to the Public Staff, consistent with past practice.

c. Joint Implementation Across DEC and DEP Balancing Authority Areas

The Companies will jointly issue the 2024 RFP, as it has with the 2023 RFP and prior procurements. The Companies’ joint implementation approach again received stakeholder support and provides the most efficient approach to procuring new solar resources, whether in DEC’s or DEP’s service territory in either North Carolina or South

³ The 2024 RFP webpage will be hosted on the same website as the existing 2023 RFP website.

Carolina⁴, to meet future system needs reliably. Joint implementation across the DEC and DEP Balancing Authorities also ensures consistency in the evaluation and contracting processes and in developing highest ranked, lowest cost portfolios of new solar energy resources for customers. As discussed further below, the Companies are planning minimum target allocations of solar in DEC and DEP, similar to the 2023 RFP and 2022 RFP. Specific to cost recovery, however, DEC and DEP will separately contract with winning proposals and seek recovery of utility-owned resources located within each utility's assigned Balancing Authority Area. Each utility will be independently responsible for the full cost of renewable energy resources procured within its service territory.

d. Planned Target Volume and Minimum DEC-DEP Allocation of Procurement

The Companies are targeting procurement of 1,585 MW of new solar resources through the 2024 RFP, subject to a VAM, as further discussed below. Of this overall 1,585 MW target, the 2024 RFP will solicit 535 MW of solar only resources and up to 1,050 MW of SPS resources. The SPS target includes 400 MW of paired battery energy storage. These targeted volumes of solar and SPS were informed by the solar and SPS resources selected in the Carbon Plan to be procured during the 2023-2024 near-term action plan ("NTAP") period⁵, the Companies' ongoing resource planning activities for North Carolina and South Carolina,⁶ as well as recent terminations of pre-existing HB 589 CPRE PPAs that were assumed to be placed into service in 2024-2025 but now must be replaced with new solar.

The 1,585 MW procurement target of new solar resources includes 1,350 MW of the 2,350 MW of new solar identified as needed and selected by the Commission in the 2022 Carbon Plan Order to be placed in service by 2028, 85 MW of additional solar-only resources targeted for procurement to replace terminated HB 589 CPRE MW that were

⁴ The Companies continue to believe Balancing Authority Area-wide procurements across both DEC's and DEP's North Carolina and South Carolina service areas can most efficiently deliver the highest ranked, lowest cost portfolio of projects to meet customers' energy needs. For the Commission's awareness, on February 22, 2024, the Public Service Commission of South Carolina ("PSCSC") issued an order concluding that "the development and establishment of a CPRE program . . . in the Companies' respective balancing authority area is in the public interest [for South Carolina]." *See Order Approving the Applications of Duke Energy Carolinas, LLC and Duke Energy Progress LLC Establishing a Competitive Procurement of Renewable Energy (CPRE) Programs*, Order No. 2024-141 at 42, PSCSC Docket Nos. 2022-239-E and 2022-240-E (Feb. 22, 2024) ("PSCSC Order"). The PSCSC found that the Companies' framework used to develop, administer, and implement balancing authority area-wide CPRE programs is reasonable and complies with South Carolina law, and that the 2022 RFP "demonstrates the Companies adequately followed the framework and [the 2022 RFP] resulted in a fair, open, transparent, and non-discriminatory procurement." PSCSC Order at 43-44.

⁵ *Order Adopting Initial Carbon Plan and Providing Direction for Future Planning*, at 87, 132 Docket No. E-100, Sub 179 (Dec. 30, 2022) ("Carbon Plan Order").

⁶ *See Order Accepting 2022 Integrated Resource Plan Updates*, Order No. 2023-189, Docket Nos. 2019-224-E, 2021-10-E, 2019-225-E, 2021-8-E (P.S.C.S.C. Mar. 22, 2023). *See also PSCSC Order* at 16 (finding that "[t]he development of a CPRE program should be driven primarily by specific system needs identified in a utility's Commission-approved or accepted IRP, or a similar planning process."); at 44 (concluding that "[t]he Companies' CPRE procurement must be driven by an IRP or similar planning process.").

assumed to be installed prior to the 2026-2028 NTAP period, as well as an additional 150 MW of incremental solar to recognize the potential for future resource attrition due to PPA terminations, as supported in the 2023-2024 CPIRP updated NTAP.⁷ The Companies are also targeting procurement of 340 MW of the 600 MW of paired battery energy storage selected for procurement in the 2022 Carbon Plan NTAP and 60 MW identified in current 2023-2024 CPIRP NTAP to counteract future attrition.⁸

Similar to the 2022 SP and 2023 RFP, the Companies are also planning to require a minimum allocation of the targeted solar to be procured in DEC and DEP. The Companies will allocate approximately one quarter of the 2024 target procurement volume for solar resources (whether or not they are paired with storage) to DEC and one quarter to DEP, while the remaining quantity will be procured based upon the highest ranked, lowest cost proposals, whether located in DEC or DEP.⁹ Utilizing this minimum target allocation ensures that the costs of resources procured in the 2024 RFP are shared amongst the Companies, and the approach was specifically developed in response to feedback received during the stakeholder process. This approach also addresses concerns expressed by the Commission and Public Staff in the initial Carbon Plan proceeding regarding rate disparity and the achievement of equitable allocation of Carbon Plan costs between DEC and DEP pre-merger.¹⁰

e. Volume Adjustment Mechanism

The Carbon Plan Order directed the Companies to “design the future solar procurements to incorporate a VAM, similar to the VAM in the 2022 Solar Procurement, that would allow for the procurement of increased amounts of solar resources should the winning portfolios produce cost-effective bids.”¹¹ Throughout the stakeholder process, the Companies have discussed the use of a VAM with the Public Staff and industry stakeholders. The utilization of a VAM will enable incremental purchases of solar if the cost of the incremental solar procured is less than the forecasted cost of solar in future procurements. The VAM also helps to mitigate risks of over-procuring more expensive solar in the near-term, in an environment where solar costs are expected to decrease, and where generation interconnection capability and other resource constraints may place solar resources into service after the targeted in-service year identified in the procurement.

⁷ Carbon Plan Order at 87, 132. In total, 685 MW out of the total 1,340 MW of procured HB589 CPRE MW have terminated their PPAs. CPIRP Supplemental Planning Analysis at 47, 50; Verified Amended Petition For Approval Of 2023-2024 Carbon Plan and Integrated Resource Plans, at 28, 30.

⁸ CPIRP Supplemental Planning Analysis at 47, 51 (Table SPA 4-3).

⁹ This targeted allocation contemplates that the Companies will target minimums of approximately 400 MW of new solar in DEC and DEP, which reflects an increase in minimum target procurement volume from the 2023 RFP.

¹⁰ Carbon Plan Order, at 42, 126-128.

¹¹ Carbon Plan Order at 87.

The proposed VAM to be included in the 2024 RFP is similar to the VAM included in the 2023 RFP. Additional solar projects can be procured if the cost of procuring the additional solar is less than the cost of solar (i.e. solar reference cost) assumed in the most recently filed resource plan. Specifically, for the 2024 RFP, the solar reference cost is the installed cost of solar in 2028 from the 2023-2024 CIPRP Supplemental Planning Analysis, which aligns with the projected in-service date of solar procured in the 2024 RFP.

Based on stakeholder feedback, and as reflected in Table 1 below, the Companies are planning an asymmetric VAM hurdle rate that allows for higher levels of procurement if prices are (5%) below the solar reference cost and a possible reduction to the procurement if prices are (10%) above the solar reference cost.

Table 1: 2024 RFP VAM Hurdle Rate and Total Solar Procurement Adjustment

Hurdle Rate Cost	Volume (of total)	<u>Total Solar</u>
+10% (high cost)	-10% (less)	1,425 MW (low)
-5% (low cost)	+10% (more)	1,745 MW (high)

The 2024 RFP is targeting 535 MW of standalone solar and 1,050 MW of solar that is paired with storage. The determination of whether the VAM will lead to increased or reduced solar procurement is based only on the prices of the solar-only bids (i.e. 535 MW); however the volume adjustment will apply to the full 1,585 MW solar procurement target. This means that if the standalone solar bids are 5% lower cost than the solar reference cost, then the total procurement may increase from 1,585 MW to 1,745 MW by increasing the amount of standalone solar from 535 MW to 695 MW while maintaining 1,050 MW of solar paired with storage. The primary reason for implementing the VAM based only on standalone solar bids is that there is no directly comparable SPS reference cost to compare the SPS bids. Additionally, solar energy, whether flowed directly to the grid, or stored for discharge later in time with the assistance of storage, is the primary resource in this procurement that is required to meet the goals of the Carbon Plan. While the quantity, proportion, paneling-to-export ratio and other factors of SPS may change in the next resource plan, it is clear that there will be a continued need for solar-only resources, and there is relatively limited variability within this technology type. Designing the VAM for solar-only resources is essentially a “no regrets” approach consistent with the intent of the VAM.

As in the 2023 RFP, the 2024 RFP will keep certain market depth requirements in place to ensure that there are sufficient bids to choose from in order to reach the target quantity. The required market depth of paired storage will again be set at least two times the target volume to ensure an ample and competitive bid pool. Therefore, if the number of paired storage MW of complete “cured” Proposals does not exceed 800 MW (which is

the paired storage target of 400 MW times two), then the target could be reduced. The new target will be set proportionally based on the total MW of paired storage Proposals (that are deemed complete by the IE).¹² If the SPS market depth requirements are not met and the SPS Facility target is reduced, the Solar-Only Facility target will increase to make up the difference in targeted solar MW.

f. Utility Ownership Track and Controllable PPA Track

The Companies have designed the 2024 RFP to procure utility owned and third-party controllable PPA resources. Both solar and SPS resources will be procured under either the UOT or third-party controllable PPA track. The Companies will procure a balanced portfolio of UOT and controllable PPA Track solar and SPS proposals, targeting a reasonable balance of utility-owned and third-party owned solar resources made up of 55% UOT proposals and 45% controllable PPA Track proposals.¹³ Assuming this balanced portfolio of resources is achieved, approximately 870 MW of UOT resources will be procured and 715 MW of PPA Track resources will be procured. The requirements for bidding Proposals into each proposal track are described below.

The following requirements will apply to controllable PPA Track proposals:

- The point of interconnection (“POI”) size of the facility shall be greater than 20 MW in DEC and 40 MW in DEP and up to 80 MWac (in both DEC and DEP);
- The facility must be transmission connected and capable of being placed into service by November 30, 2029;
- The facility must be certified as a Qualifying Facility;
- Solar-only facilities will be subject to 5%/10% (DEC / DEP) economic curtailment rights;
- Solar-only facilities will be offered 25-year PPAs;
- SPS facilities will be offered 15-year PPAs;
- Duke Energy unregulated affiliates are ineligible to submit proposals; and
- Storage Capacity should be sized between 35 and 40 percent of the POI capacity limit and must have a minimum duration of 4 hours.¹⁴

The following requirements will apply to UOT proposals:

- The POI size of the facility shall be greater than 20 MW in DEC and 40 MW in DEP and capable of being placed into service by November 30, 2029;
- The facility must be transmission connected;

¹² As an example, if the companies receive 600 MW of SPS Proposals, the new SPS Target will be 300 MW of storage, to be paired with approximately 800 MW of solar (such that the target storage ratio is approximately 37.5% of the solar capacity it is paired with).

¹³ This 55%/45% portfolio will be measured based on the solar maximum export at the POI and will be further informed by the ultimate results of the 2022 SP.

¹⁴ The Companies may require the storage portion to be rounded to the nearest one MW or five MW increment, and will have further discussion with market participants on this topic in advance of finalizing the 2024 RFP.

- The facility must adhere to required design criteria and approved vendors;
- Utility-developed resources can participate, but Duke Energy unregulated affiliates are ineligible to submit proposals; and
- UOT proposals may be bid as Asset Transfer or Build-Own-Transfer.¹⁵

Both UOT and controllable PPA proposals will be evaluated for interconnection costs through the RSC. The Companies will not accept proposals with an executed Interconnection Agreement (“IA”) in the 2024 RFP, as the past two RFP cycles were intended to provide ample procurement opportunity for such projects that received their IAs through the prior serial process, and allowing projects with IAs from the cluster process to participate would encourage speculative projects in the DISIS to move to an IA without an offtake agreement. By having all projects participate in the RSC, the evaluation will be a better “apples-to-apples” comparison for interconnection cost and risk.¹⁶

g. Pricing Structure for Proposals

All controllable PPA track projects must submit a 25-year fixed price for their solar-only facility price denominated in \$/MWh. The Companies are requiring such a bid to maximize the potential solar energy yield of the 2024 RFP through the VAM, as the need for solar energy is substantial over the planning horizon. Recognizing the more significant paired storage target in this 2024 RFP, the Companies evaluated whether to alternatively require a SPS bid but, based upon stakeholders’ feedback, have elected to continue to require a solar-only bid and allow the SPS bid as an option, rather than the other way around.

The structure of the solar-only bids in the 2024 RFP will be essentially the same as in the 2023 RFP. Solar-only controllable PPA track bids will be composed of a fixed Part A bid price for the entire 25-year term of the PPA, denominated in \$/MWh (which covers the project’s cost up to the POI) and a Part B bid price, which is denominated in a fixed \$/MWh for every million dollars of Network Upgrades that are allocated to the project. All solar-only PPA winners will fund their upgrades and be reimbursed for their cost by adding the Part B bid price to the Part A bid price to establish a Contract Price Adjustment for inclusion in the controllable PPA.

In the event a controllable PPA Track market participant also wishes to submit a SPS proposal, it must submit a different set of fixed prices for the 15-year term of the SPS contract as noted below. This is in addition to the mandatory 25-year solar-only Part A and Part B prices.

¹⁵ Consistent with the 2023 RFP, the Companies are no longer soliciting Asset Transfer + EPC for efficiency purposes as there were limited proposals submitted under this track in the 2022 SP.

¹⁶ Similar to prior RFPs, a project currently in an earlier DISIS Cluster will have the option to exit that Cluster and enter the 2024 RSC by the close of the bid window. A project with an IA could similarly terminate its IA and enter the RSC.

For SPS projects, the Companies have set the fixed energy price that all SPS projects will receive for energy delivered at the POI, whether that energy comes directly from the solar generation or from the associated battery. All projects will be paid the same amount (a fixed \$25/MWh), which is consistent with the bidding structure and contracting framework for the 2023 RFP.

The PPA track SPS proposals will also have a two-part bid, which will be called Part C and Part D for clarity. Proposals will bid a Part C price denominated as a fixed dollar amount (per month or per year) for each MW of storage capacity and a Part D price denominated as a fixed dollar amount (per month or per year) for each MW of storage capacity to fund any assigned upgrade costs, which would be funded by the bidder. All SPS PPA winners will fund their upgrades and be reimbursed for their cost by adding the Part D bid price to the Part C bid price and adjusting pricing in the controllable PPA.

For both solar-only and SPS resource types, UOT market participant proposals will submit a fixed dollar amount required to deliver a fully developed and constructed complete solar-only project under the Build-Own-Transfer option or a fully developed project under the Asset Transfer option. In the case of Asset Transfer proposals, the Companies will then add the cost of constructing and commissioning the project to the Asset Transfer bid for submission to the IE. For utility-developed projects, Duke Energy will submit an all-in fixed price for the project to the IE before it receives any information from the IE on any third-party UOT bids. If the bidder is also offering the facility as a SPS facility, it will identify that in the bid form as well.

Similar to the 2023 RFP and 2022 SP RFP, the UOT team will provide and submit to the IE the operating costs for all UOT proposals, including production estimates.

h. Bid Evaluation Process

The 2024 RFP bid evaluation process will commence with a pre-solicitation bidders conference after the RFP and PPA documents are finalized and filed with the Commission on or about June 28, 2024. As illustrated in the 2024 RFP Bid Process schedule below, the bid window will open on August 15, 2023, with proposals being allowed to be submitted through September 30, 2024.

2024 RFP Bid Window through Contracting Process	Dates
Final RFP document and PPA	6/28/2024
Pre-solicitation bidders conference	Early August 2024
Bid window	Aug 15 – Sept 30, 2024

Bid cure period	Early Oct 2024
Customer Engagement Window for RSC	Mid Oct – Dec 2024
Step 1 RFP Evaluation (without System Upgrades)	Late Oct 2024– early Jan 2025
Select "Short List" to be invited to Step 2 RFP	Early Jan 2025
Short List posts proposal security due 10 business days after invitation	January 2025
Bid evaluation Step 2 including RSC Phase 1 study of short list	Feb-May 2025
Announce winners	Mid May 2025
Execute contracts and LOIs	Mid May – Mid June 2025
IE Post Solicitation Report	July 2025

At the close of the bid window, the IE and the Duke Energy evaluation team will create a ranked list of solar-only proposals and SPS proposals for the PPA track and for the UOT track based upon the combined non-economic and economic scoring criteria for each proposal within each track and resource type. The selection methodology is similar to the 2023 RFP (which used levelized cost of energy) and is adjusted to reflect the cost of the storage for SPS proposals.

From that ranking, a short list of proposals roughly two to three times the target volume will be developed and invited to continue in the 2024 RFP. Proposals that continue will post Proposal Security and will move on to Phase 1 of the interconnection study process (Step 2 of the RFP process) as part of the RSC.

In the Step 2 RFP evaluation, short-listed proposals will have an opportunity to revise their bid price in the downward direction only and provide other applicable non-economic updates to the IE. At the end of the RSC Phase 1 study, the proposals will be re-ranked to include the cost of system upgrades and other interconnection information from Transmission and the list of finalists will be created. Red Zone Expansion Plan (“RZEP”) upgrades included in an approved Carolinas Transmission Planning Collaborative (“CTPC”) annual transmission plan will be treated in the same manner as other contingent facilities for purposes of interconnection study and assignment of Upgrade costs.¹⁷

Online date estimates will be provided from the RSC Phase 1 results and will be incorporated into the Step 2 evaluation. The RFP is seeking projects that will come online by 11/30/2029 and, as in 2022 and 2023 RFPs, the Companies may decline to award or

¹⁷ Order Granting Extension, Establishing Procedures, and Permitting Use of Resource Solicitation Cluster and Elimination of Red Zone Expansion Plan Cost Adder at 8, Docket Nos. E-2, Sub 1340, E-7, Sub 1310 (Mar. 22, 2024) (“March 22 Order”).

acquire a facility if, in the opinion of Duke Energy, System Upgrades required to interconnect the facility cannot be constructed in time to achieve Commercial Operation by that date. New to the 2024 RFP, the Companies have developed a mechanism based upon stakeholder feedback that will allow Sellers under PPAs with an estimated Commercial Operation Date more than a year beyond 11/30/2029 to adjust PPA pricing to account for the estimated extra carrying costs of their network upgrade deposit (as described below in section i.) and their Step 2 evaluation would reflect such adjustment. Similarly, an RFP finalist that is offered a contract and has an estimated online date (from the interconnection Phase 1 report) after 11/30/2029 may also decline their contract without losing their proposal security, since their bid prices were established with an earlier assumed online date.

i. Addressing Stakeholder Feedback and Concerns Regarding Project Attrition and Long Duration Network Upgrades

Consistent with the Commission's direction in the July 26, 2023 Order accepting the 2023 RFP, the Companies have engaged market participants through a robust initial 2024 RFP development process, with the goal of developing a commercially reasonable RFP structure and terms that balance the dual interests of driving robust participation and keeping procured energy costs low for the Companies' customers.¹⁸ As part of this initial Proposal development and engagement step, the Companies attempted to create an open forum for market participants and other stakeholders to share insights on the recent market dynamics that have contributed to project attrition and other challenges as the Companies are now planning for the largest-ever solar and SPS procurement in the Carolinas. Specifically, through Stakeholder Meetings #1 and #2, the Companies shared an early RFP framework, sought feedback and suggestions, and incorporated some of the feedback received into this RFP Proposal. One issue that stakeholders were specifically concerned about is the increasing uncertainty and cost risk for winning projects that are assigned long duration network upgrades. As noted in Section I.f., above, project Proposals are required to be capable of commencing delivery by November 30, 2029. Consistent with this requirement, market participants shared that bids are developed, and a business plan is created with the assumption that revenue will be generated around that time. Market participants identified the risk that a significantly later online date changes the timing of cash flows of the project and may introduce other risks, such as increased uncertainty in assumed equipment and construction pricing. State jurisdictional interconnection customers are also obligated to pay their full network upgrade costs soon after executing the Interconnection Agreement, resulting in project sponsors committing potentially significant upfront capital for a longer period of time (before COD and revenue is generated), which creates additional carrying costs for the project.

In response to this feedback, and through engagement with the Carolinas Clean Energy Business Association ("CCEBA"), the IE and the Public Staff, the Companies have

¹⁸ Order Accepting Proposed 2023 Solar Resource Procurement Request for Proposals Documents, at 11 Docket Nos. E-2, Sub 1317 (July 26, 2023) ("Order Accepting 2023 RFP").

incorporated a PPA interconnection carrying cost adjustment for winning projects with CODs more than a year beyond 11/30/2029. For projects triggering this provision within the controllable PPA, an interest calculation would be performed, based upon their network upgrade deposit, and added to the total network upgrade costs in calculating the Part B adjuster (as described in Exhibit 2 of the solar PPA).

Additionally, the option to decline to select a facility with an online date beyond 11/30/2029 will be employed, provided that there are sufficient remaining alternatives to still meet the RFP target quantities with highest-ranked, least-cost projects. PPA proposals that would qualify for the interconnection carrying cost adder described above would also have this cost included in their bid evaluation and compared to other alternatives in the Step 2 evaluation. Per stakeholder feedback, the Companies would also allow a proposal selected as a finalist with an online date beyond 11/30/2029 the option to decline their win and not execute an offered controllable PPA without forfeiting their proposal security. Providing this option will mitigate financial risk for competitively-priced bidders that are advanced to the Step 2 short list but then are assigned longer lead time upgrades that impacts their development or financing costs and, therefore, should allow bidders to offer more competitive proposals.

Another concept discussed with stakeholders in developing the 2024 RFP Proposal was a cost-indexing PPA price adjuster pegged to certain market indices designed to mitigate the potential for material changes in project costs after the controllable PPA is executed. This concept was initially raised by CCEBA in the 2023 RFP development process, but the Companies, Public Staff and solar developer stakeholders generally recognized and agreed that the concept was not sufficiently developed or supported for inclusion in the 2023 RFP.¹⁹ To further explore this concept for the 2024 RFP, the Companies prompted further discussion and proposals in 2024 RFP e-mail notices to stakeholders, in the stakeholder meetings and in discussion with CCEBA, Public Staff and CRA. The feedback received was that executing the concept is extremely complex (including deciding which market indices to peg the project costs to, and by what proportions, and by which start and end date for adjustment). Furthermore, there was no consensus among the stakeholders involved for how to execute such a mechanism, or whether the cost indexing price adjustment concept was even favored over the current bidding process and existing PPA. Some developers liked the idea of the PPA price potentially moving with the market, while others viewed it as further uncertainty in their revenue stream. Moreover, the few identified examples of RFPs in the U.S. that had executed such a cost-indexing contract were almost exclusively used for offshore wind projects, in which the PPAs have extremely long timelines between PPA execution and COD and the potential for even more material changes in project costs. For all of these reasons, and because there is no specific market price adjustment calculation proposed, the Companies notified stakeholders during Stakeholder Meeting #2 that they are not proposing to introduce a cost-indexing PPA price adjuster mechanism to the PPA structure for the 2024 RFP.

¹⁹ Order Accepting 2023 RFP at 9, 11.

Finally, stakeholders highlighted concerns about long-lead time upgrades generally and the importance of accelerating the generator interconnection process for projects selected in the 2024 RFP. While transmission planning and generator interconnection issues are beyond the scope of the 2024 RFP design, the Companies recognize the importance of optimizing the generator interconnection process to reduce uncertainty and to efficiently process, study and execute on new solar and other generator interconnections. The Companies engaged on these stakeholder recommendations in Stakeholder Meeting #2 and will continue to engage on identified process improvements in other appropriate forums and proceedings.²⁰

j. SPS Operational Conditions, Terms and Conditions

The Carbon Plan Order directed the Companies to develop and incorporate into the 2023 RFP proposed terms and conditions, operational conditions, and a pro forma PPA to be used for SPS resources.²¹ The Companies developed these documents for the 2023 RFP and presented them to the Commission as part of their 2023 RFP Proposal filing.²² The operational requirements for the solar paired with storage facilities developed for the 2023 RFP include four hour storage duration, a standardized storage size in relation to the facility's maximum export, the ability to charge off of the grid, and the ability for the Companies to have full dispatch control of the storage. The solar paired with storage terms and conditions are detailed to include metering and data requirements to provide verification of the performance of the storage. These operational requirements to maximize the value of these resources to the system as well as contract structure and terms and conditions for controllable SPS PPA purchases from third parties developed for the 2023 RFP continue to be appropriate for procuring SPS resources for the 2024 RFP and, therefore, the Companies have not proposed any material changes to these aspects of the procurement framework.

k. Solar-Only and SPS Pro Forma PPAs

The Companies are making limited changes to the solar-only and SPS controllable PPA pro forma contracts used in the 2023 RFP. Section 4.5.2 and Exhibit 2 (solar-only)/B (SPS) has been updated to align with stakeholder feedback to provide a carrying cost adjustment mechanism for long duration network upgrades as introduced in Section I.i above. The Part B/D adjustment calculation includes a description of the formula for the carrying cost interest and is updated to use the actual interconnection costs from the Final Accounting Report instead of just an estimate from the Interconnection Agreement. Additionally, the solar-only and SPS PPAs have been updated in regards to the consequences of not following a Control Instruction to dispatch down the Facility. Seller's failure to follow Seller's Control Instruction continues to be an event of default; however,

²⁰ See Attachment 5 Stakeholder Meeting #2 Presentation at p 11-12.

²¹ Carbon Plan Order at 133.

²² See 2023 Solar and SPS RFP Proposal at Attachment 3: Solar Paired with Storage: Overview of "Operational Conditions" and Planned Use Case for 2024 RFP Procured Resources and Attachment 4 Solar Paired with Storage Terms and Conditions

recognizing that such default by Seller may not justify termination of the PPA in all instances, the Companies have incorporated a damages requirement, which shall be in addition to the other remedies available to Buyer. A redline comparing the pro forma 2023 RFP solar-only controllable to the draft controllable solar-only pro forma PPA being developed for the 2024 RFP is included as Attachment 3 and a redline comparing the 2023 RFP SPS PPA to the new draft SPS pro forma PPA being developed for the 2024 RFP is included as Attachment 4.

I. 2024 RFP Resource Solicitation Cluster

The Companies plan to implement a 2024 RFP-specific RSC to study generator interconnection requests for projects that are shortlisted after Step 1 of the bid evaluation process.²³ As previously explained to the Commission, use of an RFP-specific RSC will incorporate lessons learned from the 2023 RFP, which is currently using a Resource Solicitation Cluster rather than align with the 2023 DISIS. The 2024 RFP and RSC are designed to reduce the likelihood of an RSC Phase 3 restudy as well as a DISIS Phase 3 restudy and will cause only minimal impacts to the timeline for completing the interconnection study process relative to aligning with the earlier 2024 DISIS. As noted on the bid evaluation schedule presented in section I.h (Bid Evaluation Process) above, the 2024 RFP RSC Phase 1 will commence in February 2025 after 2024 RFP Step 1 bid evaluation (shortlist) has been completed, and will build off of the 2024 DISIS Phase 2 study assumptions.²⁴ The RSC rules and process will be consistent with the DISIS study process and cost allocation approach in all material respects and RFP-specific considerations and additional requirements will be presented as an appendix to the 2024 RFP.

To bid into the 2024 RFP, all bidders must submit an interconnection request and initial study deposit to enter the RSC by the close of the 2024 RFP bid window. Similar to the 2023 RFP, the 2024 RFP timeline is designed to discourage "cluster jumping" and to reduce instability in the 2024 DISIS by not selecting the 2024 RFP short list after Step 1 (which will be about two times the 1,585 MW target) until after the 2024 DISIS Phase 2 has begun. Generator interconnection requests associated with proposals being bid into 2024 RFP must only be in the 2024 RSC, as of the close of 2024 RFP bid window on September 30, 2024.

Duke Energy's transmission planning organization will perform the RSC Phase 1 studies and issue a Phase 1 RSC report identifying the interconnection costs for all short-listed project proposals in the Phase 1 study. Using Phase 1 study information, the Duke Energy evaluation team and the IE will then assess RFP portfolio options to identify the highest ranked, lowest cost portfolio of proposals that achieve the RFP objectives,

²³ See March 22 Order, *supra* note 17 (permitting use of RSC for implementing 2024 RFP). The Companies have requested similar authorization from the Public Service Commission of South Carolina to use the Resource Solicitation Cluster option to study South Carolina-jurisdictional interconnection requests from the PSCSC under the South Carolina Generator Interconnection Procedures Appendix Duke CS Section 5.3.2.

²⁴ The 2024 DISIS Phase 2 study is anticipated to commence in late December 2024 or January 2025.

including minimizing restudy risk, prior to selecting 2024 RFP winners. 2024 RFP winners will continue to be studied in the RSC, while proposals that are not selected as winning proposals may enter the 2025 DISIS or wait for the Companies’ decision on whether to again utilize an RSC separate from DISIS for the 2025 RFP. A general timeline of the 2024 RFP RSC is as follows:

2024 RSC Steps	Dates
Cluster Enrollment	8/15/2024 – 9/30/2024
Pre-Phase 1 Customer Engagement Window	Nov 2024 – January 2025
Phase 1 Study	Feb 2025 – April 2025
Pre-Phase 2 Customer Engagement Window	May 2025
Phase 2 Study	June 2025 – Nov 2025
Customer Engagement Window	Nov 2025
Executed Facility Study Agreement and M4 (FERC) or M3 (State) due	Dec 2025
Facilities Study	Jan 2026 – June 2026
M4 Due (State)	June 2026
Interconnection Agreements executed (different for FERC and State)	June – August 2026

In response to stakeholder feedback from the 2023 RFP, and after discussion with the Public Staff, the Companies are also designing the RSC to accommodate limited optionality for RFP non-winners to allow those shortlisted projects with a completed RSC Phase 1 study to also proceed to RSC Phase 2 if the Interconnection Customer can demonstrate definitive commercial readiness by providing either (i) a fully executed Green Source Advantage (“GSA”) Program PPA; or (ii) an executed GSA term sheet and Application, with the requirement that a GSA PPA then be executed within 90 days of term sheet execution. Where an Interconnection Customer commits to proceed in the RSC under option (ii) and has not yet executed a GSA PPA, then the Companies will retain the Proposal Security (same as RFP Proposal Security) until the GSA PPA is executed and draw upon the security if the GSA PPA is not executed in the required timeframe.

m. Grid Locational Guidance for Market Participants

Similar to the 2022 SP and prior HB589 CPRE RFPs, the Companies will post grid locational guidance indicating known transmission limitations resulting from the amount of existing or proposed renewable energy facilities in a particular area. This grid locational guidance is intended to provide market participants with information regarding areas on the transmission system where upgrades are likely needed based upon recent transmission system studies. The grid locational guidance for the 2024 RFP will utilize recent study information from the 2023 DISIS, in particular from Phase 1 since it represented a larger

quantity of requested interconnecting solar facilities than Phase 2. Bidders may also want to consider their location in relation to upgrades that have been flagged in earlier DISIS reports, as this information could help them anticipate what the earliest possible online date of their facility might be. The approved RZEP projects will be noted in the grid locational guidance information.

II. Plans for System-Wide Cost Recovery

The Companies intend for utility-owned resources and third-party PPA proposals procured in the 2024 RFP to be “system supply resources” delivering energy and capacity to the Companies’ grid to serve all North Carolina retail, South Carolina retail, and wholesale jurisdictional customers. As such, the Companies are planning to allocate the cost of energy, capacity, and renewable and environmental attributes generated by facilities procured through the 2024 RFP to all jurisdictions and customers. This allocation method is appropriate because the energy delivered by facilities procured through the 2024 RFP is needed to meet DEC’s and DEP’s future system-wide resource needs, and these new resources provide system-wide benefits by contributing to least cost and reliable service to all customers within the Companies’ Balancing Authority Areas. However, the Companies identify for the Commission’s awareness that the Public Service Commission of South Carolina (“PSCSC”) has not yet ruled on the Companies’ request for approval of the Companies’ 2023 IRP as the most reasonable and prudent plan to serve South Carolina. The Companies’ plans for system-wide cost recovery are contingent upon obtaining reasonable assurance of and/or actual recovery of such costs in all jurisdictions and are subject to change.

2024 RFP PPA costs allocated to the North Carolina retail jurisdiction will be recovered through the North Carolina fuel clause pursuant to N.C. Gen. Stat. § 62-133.2. Utility-owned resources will be recovered through base rates.

Appendix A

2024 RFP/RSC Schedule and Timeline of Activities	Dates
Stakeholder Meeting #1	1/30/2024
Stakeholder Meeting #2	3/14/2024
File RFP Proposal, Pro Forma SPS PPA	4/12/2024
Stakeholder review and feedback to Duke on draft RFP documents	Mid April – Mid May 2024
Stakeholder Meeting to discuss market participant feedback	Early June 2024
IE Pre-solicitation report re: RFP documents filed with NCUC	6/28/2024
Final RFP document and PPA filed with NCUC	6/28/2024
Pre-solicitation bidders conference	Early August 2024
Bid window	8/15/2024 – 9/30/2024
Cluster Enrollment	8/15/2024 – 9/30/2024
Bid cure period	Early Oct 2024
Step 1 RFP Evaluation (without System Upgrades)	Late Oct 2024 – early Jan 2025
Pre-Phase 1 Customer Engagement Window	Nov 2024 – January 2025
Select "Short List" to be invited to Step 2 RFP	Early Jan 2025
Short List posts proposal security due 10 business days after invitation	January 2025
Phase 1 Study	Feb 2025 – April 2025
Bid evaluation Step 2 including RSC Phase 1 study of short list	Feb – May 2025
Pre-Phase 2 Customer Engagement Window	May 2025
Announce winners	Mid May 2025
Execute contracts and LOIs	Mid May – Mid June 2025
Phase 2 Study	June 2025 – Nov 2025
IE Post Solicitation Report	July 2025
Customer Engagement Window	Nov 2025
Executed Facility Study Agreement and M4 (FERC) or M3 (State) due	Dec 2025

Facilities Study	Jan 2026 – June 2026
M4 Due (State)	June 2026
Interconnection Agreements executed (different for FERC and State)	June – August 2026

Attachment 2

2024 Independent Evaluator Scope of work

Duke Energy Carolinas, LLC
Duke Energy Progress, LLC
Docket No. E-2 Sub 1340
Docket No. E-7 Sub 1310

Exhibit A-2

Duke Energy Carolinas, LLC/Duke Energy Progress, LLC

Independent Evaluator Scope of Work for 2024 Solar and Solar paired with Energy Storage Procurement

This scope of work addresses the role and responsibilities of the Independent Evaluator ("IE") to oversee Duke Energy Carolinas, LLC/Duke Energy Progress, LLC's (together, the "Companies" or "Duke Energy") 2024 request for proposals ("RFP") for new solar and solar paired with energy storage resources ("2024 Solar Procurement Program" or "2024 RFP"). The 2024 RFP will procure utility-owned and third-party power purchase agreement ("PPA") solar and solar paired with energy storage resources to serve customers' future energy needs. The 2024 RFP will be evaluated in a Resource Solicitation Cluster ("RSC"), subject to approval from the North Carolina Utilities Commission, which will fall between the 2024 Definitive Interconnection System Impact Study ("DISIS") and the 2025 DISIS. The RSC bid window will be open from August 15, 2024, to September 30, 2024.

1. ENGAGEMENT AND PRE-SOLICITATION PROCESS

- a. Duke Energy plans to engage the IE on or before March 31, 2024, in order for the IE to facilitate a 60-day pre-solicitation process in coordination with the Companies' 2024 RFP evaluation team.
- b. Prior to contracting with the IE, the prospective IE shall provide the Companies' with estimated costs for managing the 2024 RFP as described herein and consistent with the requirements of the 2024 RFP.
- c. The IE shall set up and maintain a website to facilitate administration of the RFP. The website shall be capable of communicating with all market participants to share relevant documents, announcements and responses to frequently asked questions. The website will remain live through the fourth quarter of 2025 as needed.
- d. During the pre-solicitation process, the Companies' plan for the IE to host two RFP pre-solicitation engagement meetings via video conference with market participants and the NC Public Staff/SC Office of Regulatory Staff. The meetings will cover the overall RFP process and comments from market participants and other stakeholders to the draft RFP. The IE and the Duke Energy evaluation team will also host a pre-solicitation bidders conference via video conference in August 2024 prior to opening the bid window. Additional meetings may be established during the RFP pre-solicitation process at the request of the Duke Energy's evaluation team.
- e. The IE will participate in joint virtual meetings and discussions, as needed, with the Duke Energy's evaluation team and the NC Public Staff/SC Office of Regulatory Staff, upon request, regarding the overall RFP process and to review comments on the 2024 RFP.

- f. In addition to administering the 60-day RFP pre-solicitation process, the IE will complete a thorough assessment of the 2024 RFP design and bid evaluation process and provide input to the Duke Energy evaluation team to ensure reasonable transparency and consistency with accepted industry standards and practices for competitive solicitations. The IE will review the openness and transparency of the 2024 RFP development process and shall assess whether the 2024 RFP provides all potential bidders substantial and meaningful information regarding transmission constraints, levels of congestion, and interconnections, subject to appropriate confidentiality safeguards. The IE will also review stakeholder comments to the draft RFP. At least 10 days prior to the Companies' issuance of the 2024 RFP, the IE will submit its assessment of the draft RFP to the Duke Energy evaluation team for use in finalizing the 2024 RFP.

2. INDEPENDENT EVALUATOR ROLE DURING BID WINDOW

- a. The IE shall announce the opening of the 2024 RFP solicitation to the market participants via the IE website and identify the bid window opening and closing dates during which market participants may submit proposals into the 2024 RFP.
- b. The IE shall be responsible for initial review of proposals submitted into the 2024 RFP to ensure bids meet all applicable bidder requirements set forth in the RFP. Either prior to or after the bid window closing date, the IE may, in its discretion, allow a market participant to modify or clarify its proposal to cure a non-conformance that would otherwise require elimination of the proposal. The IE may consult with the Duke Energy evaluation team to determine whether a proposal meets the requirements for proposals set forth in the 2024 RFP. In addition to evaluating each proposal's compliance with 2024 RFP requirements, the IE will also validate in coordination with the Duke Energy evaluation team that the proposal (i) is an advanced stage proposal with an executed Interconnection Agreement or (ii) has submitted a complete interconnection request for the 2024 RFP Resource Solicitation Cluster and met initial MI readiness requirements, as applicable.

3. INDEPENDENT EVALUATION OF PROPOSALS

- a. During the Step 1 evaluation process, the IE will manage the bidding process and independently evaluate and rank utility-ownership proposals including utility self-developed projects and third-party asset acquisition projects. The IE will also independently evaluate and rank all PPA bids. The IE will adhere to the same methodology and scoring used by the Duke Energy evaluation team consistent with the 2024 RFP documents. If DEC or DEP submit self-build bids into the RFP as utility-ownership bid proposals, the IE will independently evaluate and rank these utility-

ownership bid proposals to provide transparency that Duke Energy's self-build bids were fairly evaluated compared to third party acquisition bids. The IE will provide the results of its evaluation and proposed ranking to the Duke Energy evaluation team in advance of the conclusion to the Step 1 evaluation process for consideration in developing the shortlist of bids proceeding to the Step 2 evaluation. The Duke Energy evaluation team shall be responsible for the selection of both ownership and PPA projects after the Step 2 evaluation process. The IE shall review the Duke Energy evaluation team's selection of bids to ensure that all bids were evaluated in a transparent and non-discriminatory manner.

4. PRE AND POST SOLICITATION REPORTS

The IE will develop RFP Pre Solicitation and Post Solicitation reports for use by the Companies in regulatory filings with the North Carolina Utilities Commission ("NCUC") and Public Service Commission of South Carolina ("PSCSC"):

- a. Pre Solicitation Report: The IE will complete an assessment of the final 2024 RFP at the time Duke Energy finalizes the 2024 RFP for issuance to the market. This Pre Solicitation Report will address the IE's assessment of the reasonableness and transparency of the 2024 RFP. The IE should target completion of the Pre Solicitation Report on or before June 15, 2024.
- b. Post Solicitation Report: The IE will complete a Post Solicitation Report to be filed with the NCUC and PSCSC to provide an independent assessment and certification that the 2024 RFP solicitation process was conducted in an open, transparent, and non-discriminatory manner. The Report will address whether the proposals (both for utility ownership and PPAs) selected by the Duke Energy evaluation team were selected in a fair and unbiased manner and resulted in a portfolio that minimizes long-term costs and risks for Duke's retail customers among available resources eligible for the procurement. To the extent that the IE's final rankings differed from the Duke Energy evaluation team's ranking of PPA bids or utility ownership bids, the Post Solicitation Report should explain the differences and why the IE and Duke Energy evaluation team were or were not able to reconcile the differences. The Post Solicitation Report will also address the adequacy of communication with stakeholders and bidders during the RFP process. This Post Solicitation Report will be filed within 30 days of the conclusion of the contracting window or by July 31, 2025 (whichever is later).

The IE's Post Solicitation Report should include an analysis of their monitoring of the RFP bidding and selection process of whether or the extent to which:

- c. resources selected represent the highest ranked portfolio of resources that minimize long-term costs for Duke Energy's retail customers taking into consideration overall system costs and risks,

- d. the solicitation process was conducted fairly, transparently, and consistently for all market participants,
- e. screening factors and weights were applied consistently to all PPA bids and utility-ownership bids and demonstrate consistency with the goals set by the RFP,
- f. credit and security requirements, liquidated damages provisions, resource performance and operational characteristics, warranties and other similar requirements were appropriately applied to bid evaluation and appropriately affected the outcome of the solicitation process,
- g. the IE was provided with access to all data, information and models relevant to the solicitation process to permit full and timely evaluation, testing and verification of assumptions, models, inputs, outputs, and results.

5. OTHER RESPONSIBILITIES DURING 2024 RFP

In addition to the IE's responsibilities listed above, the IE shall also undertake the following other responsibilities:

- a. Provide support in the development of the RFP, including timelines and review of stakeholder feedback.
- b. If requested by the NC Public Staff and/or SC Office of Regulatory Staff, the IE will participate in additional meetings related to the bid evaluation process and/or final selection of proposals by the Duke Energy evaluation team.
- c. Participate in any NCUC or PSCSC public meeting, technical conference or ex parte briefing (if scheduled) related to the 2024 RFP design and execution.
- d. Monitor all aspects of the solicitation process from the 2024 RFP issuance through the selection of bids.
- e. Verify the basis for selection of the initial shortlist of bids that were invited to Step 2 based upon Duke's bid evaluation methodology and consideration of price and non-price factors.
- f. Verify the basis for final selection of bids based upon Duke Energy's bid evaluation methodology and consideration of price and non-price factors.
- g. Advise Duke Energy's evaluation team and NC Public Staff and SC Office of Regulatory Staff of any issue that might reasonably be construed to affect the integrity of the solicitation process and provide the Companies an opportunity to remedy the defect identified. Advise NC Public Staff and SC

Office of Regulatory Staff of significant changes or unresolved issues as they arise.

- h. Independently score all of the PPA bids and utility ownership bids to determine whether the selections for the initial and final shortlists are reasonable.
- i. Compare the IE's and Duke Energy evaluation team's scoring and evaluation of the competing bids and attempt to reconcile and resolve any scoring differences in collaboration with Duke Energy evaluation team.
- j. Participate in any additional meetings with market participant or other parties on request and with notice to or from the Duke Energy evaluation team.

Attachment 3

Redline of Solar Only PPA to 2023 RFP
pro forma PPA

Duke Energy Carolinas, LLC
Duke Energy Progress, LLC
Docket No. E-2 Sub 1340
Docket No. E-7 Sub 1310

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



RENEWABLE POWER PURCHASE AGREEMENT
(~~2023~~2024 Solar Resource Procurement RFP)

Buyer: [Duke Energy Carolinas, LLC][[Duke Energy Progress, LLC]

525 South Tryon Street
DE Plaza 12th Floor
Charlotte, North Carolina 28202
Attn.: Contract Manager
PPA@duke-energy.com

*With Additional Notices of Events of Default
Or Potential Event of Default to:*
525 South Tryon Street, MC: DEP-09B
Charlotte, North Carolina 28202
Attn.: VP, Transactional Legal Support

Seller: _____

This Renewable Power Purchase Agreement, including Exhibits 1-9 hereto, which are incorporated into and made part hereof (collectively, the "Agreement"), is made and entered into by

and between [insert full legal name of Seller] (the "Seller") and [Duke Energy Carolinas, LLC][Duke Energy Progress, LLC] (the "Buyer") under the terms specified herein. Buyer and Seller may be referred to individually as a "Party" and collectively as the "Parties." Notwithstanding anything set forth herein, neither this Agreement nor any transaction contemplated hereunder will be effective **unless and until both Parties have executed** and delivered this Agreement, and the later of such date shall be the "Effective Date" of this Agreement.

RECITALS

WHEREAS, the Seller was selected as a winning bidder under the Request for Proposals for the ~~2023~~2024 Solar Resource Procurement issued on [_____] (the "RFP") by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC; and

WHEREAS, the Parties desire to enter into this Agreement to document the terms and conditions pursuant to which Seller shall construct, own and operate the Facility (as defined herein) and Buyer shall purchase the Product (as defined herein) produced by the Facility in accordance with the terms specified herein.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, for good and valuable consideration, the sufficiency of which is acknowledged, and intending to be bound hereby, the Parties agree as follows:

1. **Definitions**

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

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

- 1.8. "Assignment" is defined in Section 24.1.
- 1.9. "Back-Up Tapes" is defined in Section 16.3.
- 1.10. "Bankrupt" means, with respect to a Party or any Affiliate of such Party that is currently acting as its credit support provider, that such Party or Affiliate acting as credit support provider: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law 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 sixty (60) 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, or enforced on or against all or substantially all of its assets; (f) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or (g) otherwise becomes bankrupt or insolvent (however evidenced).
- 1.11. "Billing Meter" is defined in Section 10.
- 1.12. "Billing Period" is defined in Section 11.
- 1.13. "Business Day" means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time.
- 1.14. "Buyer" shall have the meaning specified in the first paragraph of this Agreement.
- 1.15. "Capacity" means and includes the electric generation capability and ability of the Facility and all associated characteristics and attributes, inclusive of the ability to contribute to peak system demands, as well as reserve requirements.
- 1.16. "Certificate" means the electronic instrument created and issued by the Tracking System.
- 1.17. "Change of Control" means a transaction or series of related transactions (by way of merger, consolidation, sale of stock or assets, or otherwise) with any person, entity or "group" (within the meaning of Section 13(d)(3) of the U.S. Securities Exchange Act of 1934) of persons pursuant to which such person, entity, or group would directly or indirectly acquire (i) fifty percent (50%) or more of the voting interests in Seller or (ii) substantially all of the assets of Seller. Notwithstanding the foregoing, a Change of Control shall not be deemed to occur based on a transaction or series of transactions pursuant to which (a) the ultimate parent of the Seller (as of the Effective Date or most recent permitted Change of Control) directly or indirectly retains fifty percent (50%) or more of the voting interests in Seller or substantially all of its assets; (b) the ultimate parent of Seller directly or indirectly retains managerial control of Seller and the right through Seller to use, operate and maintain the Facility to generate energy and to sell the Product as contemplated in this Agreement; (c) there occurs any direct or indirect transfer of shares of, or equity interests in, Seller to a tax equity investor so long as the ultimate parent of Seller retains the ability to directly or indirectly control the management and policies of Seller; or (d) a Permitted Transfer has occurred; provided that in the case of clauses (a) or (b), Seller has provided Buyer no less than thirty (30) days prior written notice of such reorganization and in the case of a Permitted Transfer to the Lenders, Seller promptly provides Buyer with written notice of the completion of the transfer and in any case no more than thirty (30) days thereafter.

- 1.18. "Commercial Operation" means that the Facility is operational and placed into service such that all of the following have occurred and remain simultaneously true and accurate: (a) the Facility has been constructed, tested, and is fully capable of operating for the purpose of generating the Product and delivering as required herein; (b) the Facility has received written authorization from the Transmission Provider for interconnection and synchronization of the Facility with the System; (c) the Facility has obtained all necessary Permits and Required Approvals; and (d) the Facility has met all requirements necessary for safely and reliably generating the Product and delivering the Product to Buyer in accordance with Prudent Utility Practice.
- 1.19. "Commercial Operation Date" means the date on which the Facility achieves or achieved Commercial Operation.
- 1.20. "Commercially Reasonable Manner" or "Commercially Reasonable" means, with respect to a given goal or requirement, the manner, efforts and resources a reasonable person in the position of the promisor would use, in the exercise of its reasonable business discretion and industry practice, so as to achieve that goal or requirement, which in no event shall be less than the level of efforts and resources standard in the industry for comparable companies with respect to comparable products. Factors used to determine whether a goal or requirement has been performed in a "Commercially Reasonable Manner" may include, but shall not be limited to, any specific factors or considerations identified in the Agreement as relevant to such goal or requirement.
- 1.21. "Commission" means the North Carolina Utilities Commission or any successor thereto.
- 1.22. "Contract Price" is defined in Section 4.5.
- 1.23. "Contract Quantity" is defined in Section 4.3.
- 1.24. "Contract Year" means a calendar year; provided, however, that to the extent that this Agreement terminates on a day other than December 31 of a calendar year, the last Contract Year shall be the period commencing at the start of hour ending 01:00 EPT on January 1 of the calendar year during which the termination occurs and ending at the conclusion of hour ending 24:00 EPT on the termination date.
- 1.25. "Control Compensation" is defined in Section 8.9.1.
- 1.26. "Control Equipment" is defined in Section 8.7.
- 1.27. "Control Instruction" means any System Operator Instruction to dispatch, operate, and/or control the Facility in the same manner and/or for any reason as the System Operator may, in its sole discretion, dispatch, operate, and/or control Buyer's own generating resources and power purchase arrangements used to provide service to Buyer's native load customers.
- 1.28. "Coordinated Universal Time" or "(UTC)" is the basis for civil time today. This 24-hour time standard kept using highly precise atomic clocks combined with the Earth's rotation referenced at zero (0) degree longitude, or prime meridian, and not adjusted for daylight saving time.
- 1.29. "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.

- 1.30. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.
- 1.31. "Creditworthy" or "Creditworthiness" - means (i) a Person with an investment grade Credit Rating from two (2) of the three (3) Rating Agencies such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least (A) BBB- by S&P, if rated by S&P, (B) Baa3 by Moody's, if rated by Moody's, and (C) BBB- by Fitch, if rated by Fitch, respectively, or (ii) has satisfactory and verifiable creditworthiness determined in Buyer's reasonable discretion.
- 1.32. "Default Liquidated Damages" is defined in Section 20.5.1.
- 1.33. "Defaulting Party" is defined in Section 19.
- 1.34. "Delivery Period" is defined in Section 4.1.
- 1.35. "Dispatch Down" means any reduction or cessation of Energy generation by the Facility in response to an order or instruction by or direct action taken by the System Operator.
- 1.36. "Disputes" is defined in Section 23.1.
- 1.37. "Early Termination Date" is defined in Section 20.1.
- 1.38. "Delivery Point" means the point of interconnection between the Facility and the System on the high side (Buyer or Transmission Provider side) of the System.
- 1.39. "Effective Date" is defined in the introductory paragraph hereto.
- 1.40. "Emergency Condition" means, no matter the cause: (a) any urgent, abnormal, operationally unstable, dangerous, or public safety condition that is existing on the System or any portion thereof; (b) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) loss or damage to the Facility or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on, to or of the System, or (iv) condition that may result in endangerment of human life or public safety; or (c) any circumstance that requires action by the System Operator to comply with standing NERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to the Facility, loss or damage to the System, disruption of generation by the Facility, disruption of service on the System, an abnormal condition on the System, and/or endangerment to human life or safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or Seller's failure to perform as required under this Agreement.
- 1.41. "Emergency Condition Instruction" means any System Operator Instruction relating to, due to, in response to, or to address an Emergency Condition.
- 1.42. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.
- 1.43. "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.
- 1.44. "Estimation Methodology" is defined in Section 8.9.3.
- 1.45. "Event of Default" is defined in Section 19.

- 1.46. "Expected Annual Output" means the quantity of Energy, determined in a commercially reasonable manner, identified in Exhibit 5 for each calendar year during the Delivery Period of the Facility. Unless otherwise mutually agreed by the Parties, the Expected Annual Output shall be equal to the annual output of the Facility specified in Seller's proposal bid form submitted in connection with the RFP. If Seller desires to deviate from the proposal bid amount, Seller shall submit a written request to Buyer no later than the bid refresh date specified in the RFP, together with evidence which is satisfactory to Buyer in its reasonable discretion, that the change is warranted and reasonable. If the Parties mutually agree to revise the Expected Annual Output, the Agreement shall be amended to document the change. If Seller fails to request an amendment to the Expected Annual Output on or prior to the bid refresh date, as required hereunder, Seller will be deemed to have waived the right to request an update to the Expected Annual Output as permitted under this Section 1.46.
- 1.47. "Facility" means Seller's [describe facility including renewable energy resource used] electric generating facility located in [_____] County, [_____] [State], at _____], as further identified in Exhibit 4.
- 1.48. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.49. "First COD Date" is defined in Section 20.5.
- 1.50. "Fitch" - means Fitch Ratings Ltd. or its successor.
- 1.51. "Force Majeure" is defined in Section 14.1.
- 1.52. "Force Majeure Instruction" means any System Operator Instruction relating to, due to, in response to, or to address a Force Majeure.
- 1.53. "GAAP" is defined in Section 9.1.
- 1.54. "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).
- 1.55. "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.
- 1.56. "Guarantor" means any Creditworthy Person having the authority and agreeing to guarantee a Party's obligations under this Agreement and is otherwise acceptable to Buyer in its reasonable discretion.
- 1.57. "Guaranty" means a parent company guaranty, in substantially the form set forth in Exhibit 6 attached hereto, provided by a Guarantor in favor of Buyer guaranteeing the obligations of Seller under this Agreement.
- 1.58. "Initial Liquidated Damages" is defined in Section 20.5.1.

- 1.59. "Independent Evaluator" shall mean Charles River Associates, the party selected by Buyer to evaluate bids submitted under the RFP.
- 1.60. "Interconnection Agreement" means the separate interconnection and transmission service agreement (or agreements) to be negotiated and executed between Seller and the Transmission Provider concerning the interconnection of the Facility with the System, upgrade to the System to accommodate the Facility's interconnection with and operation in parallel with the System, and the requirements for transmission service.
- 1.61. "Interconnection Facilities and System Upgrades In-Service Date" shall be the later of the Requested Upgraded In-Service Date and Requested Facilities In-Service Date as specified in Appendix 4 (Milestones) of the Interconnection Agreement).
- 1.62. "Interconnection Instruction" means any order, action, signal, requirement, demand, and/or direction, howsoever provided or implemented by the System Operator due to, in response to, or to address any condition relating to any service and/or obligation occurring under the Interconnection Agreement.
- 1.63. "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.
- 1.64. "kW" means kilowatt.
- 1.65. "kWh" means kilowatt-hour.
- 1.66. "Lenders" is defined in the definition of Permitted Transfer.
- 1.67. "Letter(s) of Credit" means one or more irrevocable standby letters of credit substantially in the form of Exhibit 7 attached hereto (with only such changes as the issuing bank may reasonably require and as may be acceptable to Buyer in its reasonable discretion), issued by a U.S. commercial bank or other financial institution reasonably acceptable to Buyer, which is not an Affiliate of Seller, which has and maintains a Credit Rating of at least A- from S&P and A3 from Moody's, for the Security Period, permitting Buyer to draw the entire amount if either such amount is owed or such Letter of Credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date.
- 1.68. "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.
- 1.69. "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).
- 1.70. "Maintenance Outage" means the temporary operational removal of the Facility from service

to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.

- 1.71. "Measurement Period" is defined in Section 8.5, provided, however, for purposes of clarity, the first Measurement Period shall commence on January 1st of the Contract Year following the Contract Year in which the Commercial Operation occurred.
- 1.72. "Milestone Deadline" means the deadline for Seller to achieve each Operational Milestone as set forth in Exhibit 3.
- 1.73. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.74. "MW" means megawatt.
- 1.75. "MWh" means megawatt-hour.
- 1.76. "Nameplate Capacity Rating" means the maximum generating capability of the Facility as measured at the Delivery Point (AC) as set forth in Exhibit 4.
- 1.77. "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).
- 1.78. "New Renewable Energy Facility" is defined in the Act.
- 1.79. "Non-Defaulting Party" is defined in Section 20.
- 1.80. "Operational Milestone" means each operational event and result that Seller must achieve as set forth in the Operational Milestone Schedule, with such supporting documentation as may be requested by Buyer from time-to-time in its Commercially Reasonable discretion.
- 1.81. "Operational Milestone Schedule" means the schedule established in Exhibit 3 setting forth each Operational Milestone that Seller must fully complete by the Milestone Deadline.
- 1.82. "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.83. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit or (except with respect to Performance Assurance required under Section 5.1) a Guaranty that is acceptable to Buyer in its sole discretion, in each case that meets the requirements set forth in this Agreement (including, without limitation, Section 5) provided by Seller to Buyer for the benefit of Buyer pursuant to this Agreement, as credit support, adequate assurances, and security to secure Seller's performance under this Agreement.
- 1.84. "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.
- 1.85. "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 to any of the following occurrences: (a) an Emergency Condition Instruction; (b) a Control Instruction; (c) an Interconnection Instruction; or, (d) a Force Majeure Instruction.
- 1.86. "Permitted Transfer" means any of the following: any direct or indirect transfer of the membership interests in Seller (A) to any entity providing financing to Seller or its Affiliates and their agents (collectively, the "Lenders") as a result of the foreclosure by the Lenders of the pledged ownership interests in Seller or any of its

direct or indirect parent companies; provided that after such transfer to the Lenders, the operator of the Facility remains the same as prior to the transfer, or the Lenders engage an operator with at least two (2) years of experience in the operation of at least 100 MW of solar energy projects, or (B) by the Lenders (upon or after foreclosure by Lenders as specified in (A) above) to a third party, provided that the third party transferee has, in Buyer's Commercially Reasonable discretion, the technical, engineering, financial, and operational capabilities to perform under this Agreement either directly or by engaging an entity that satisfies such requirements.

- 1.87. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.
- 1.88. "Planned Outage" means the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility.
- 1.89. "Product" means the Capacity of the Facility, Energy generated by the Facility, and the RECs associated with the Energy generated by the Facility.
- 1.90. "Protected Information" is defined in Section 16.1
- 1.91. "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 similar to the Facility, 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.
- 1.92. "PSC" means the Public Service Commission of South Carolina, or successor thereto.
- 1.93. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as such may be amended from time to time.
- 1.94. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.
- 1.95. "Qualifying Facility" means an electric generating facility that has been registered and certified by FERC as generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.
- 1.96. "Rating Agency" or "Rating Agencies" - means the rating entities of S&P, Moody's or Fitch.
- 1.97. "REA Reporting Rights" means the right of the reporting person or entity to report that it owns the Renewable Energy Attributes to any Governmental Authority or other party under any compliance, voluntary, trading, or reporting program, public or private and to any

person, customers, or potential customers for, including without limitation, purposes of compliance, marketing, publicity, advertising, or otherwise.

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

1.99. "Renewable Energy Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of Energy by the Facility, the use of such Energy, or such Energy's displacement of conventional Energy generation, including any and all renewable or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone depleting substances, ozone, and non-methane volatile organic compounds that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change (UNIPCC), by law, or otherwise by science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under regulations promulgated by the Environmental Protection Agency under the Clean Air Act and (4) the reporting rights to any of the foregoing, including, without limitation, REA Reporting Rights and any and all renewable and/or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes do not include: (i) any Energy or Capacity of the Facility; (ii) investment tax credits, production tax credits, or other tax credits, cash grants in lieu of tax credits associated with the construction, ownership or operation of the Facility, or (iii) any adverse wildlife or environmental impacts.

1.100. "Renewable Energy Certificate(s)" or "REC(s)" means and, notwithstanding anything to the contrary set forth in the Act includes, all of the Renewable Energy Attributes and REA Reporting Rights associated with one (1) megawatt hour (MWh) of Energy generated by the Facility. The REC represents all title to and claim over all of the Renewable Energy Attributes and REA Reporting Rights associated with in any manner with the Energy generated by the Facility.

1.101. "Renewable Energy Resource" is defined in the Act.

1.102. "Required Approval" is defined in Section 6.

1.103. "Requirements of Law" means any applicable federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree or Permit enacted, adopted, issued or promulgated by any Governmental Authority, including, without limitation, (i) the Act, (ii) those pertaining to the creation and delivery of the Product, (iii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.

1.104. "Resource Solicitation Cluster" or "RSC" shall have the meaning ascribed to such term in Section 4.4.2 of the North Carolina Interconnection Procedures and Appendix Duke CS, Section 5.3.2 to the [North Carolina] [South Carolina] Generator Interconnection Procedures, as applicable, for purposes of implementing a Cluster Study for proposals bid into the RFP effective as of [____].

1.105. "Second COD Date" is defined in Section 20.5.1.

- 1.106. "Security Period" is defined in Section 5.6.
- 1.107. "Seller" shall have the meaning specified in the first paragraph of this Agreement.
- 1.108. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency thereto.
- 1.109. "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. Station Power shall not include any Energy generated by the Facility and stored for later sale or delivery to the Buyer under this Agreement.
- 1.110. "System" means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, or operated by Buyer and/or the Transmission Provider, including, without limitation, facilities to provide retail or wholesale service, substations, circuits, reinforcements, meters, extensions, or equipment associated with or connected to any interconnected facility or customer.
- 1.111. "System Operator" means the operators of the System that have the responsibilities for ensuring that the System as a whole or any part thereof operates safely, efficiently, and reliably, including without limitation the responsibilities to comply with any applicable operational or reliability requirements, the responsibilities to balance generation supply with customer load, the responsibilities to comply with any other regulatory obligation including least cost dispatch and System optimization, and the responsibilities to provide dispatch and curtailment instructions to generators supplying Energy to the System. The System Operator includes any person or entity delivering any such instructions or signals to Seller or taking any action relating to, due to, in response to, or to address such instructions.
- 1.112. "System Operator Instruction" for purposes of this Agreement means any order, action, signal, requirement, demand, dispatch decision, and/or direction, howsoever provided or implemented by the System Operator to operate, dispatch, control, manage, or otherwise operate the System in accordance with any applicable obligation and/or regulatory requirement, including, without limitation, those undertaken and implemented by the System Operator, in its sole discretion based on relevant System factors and dispatch considerations, including any and all operating characteristics, maintenance requirements, operational limitations, operational or dispatch planning, reliability (including standing NERC regulations or standards), safety, least cost dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other System considerations, which may include, without limitation, any such instruction to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the System, (ii) increase, reduce, or cease generation output to comply with standing NERC regulations or standards or any other regulatory obligation applicable to the dispatch or operation of the System; (iii) respond to any transmission, distribution, or delivery limitations or interruptions; (iv) perform or cease performing any activity so as to operate in accordance with System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability generators to accommodate generation by the Facility; and, (v) suspend, interrupt, dispatch, increase or decrease any operational and/or generation activity occurring on or into the System pursuant to Control Instructions, Emergency Condition Instructions, and Force Majeure Instructions. For purposes of this Agreement, a System Operator Instruction shall not include any Interconnection Instruction.
- 1.113. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental

Authority, together with any interest and penalties thereon.

1.114. "Term" is defined in Section 3.1.

1.115. "Testing Period" is defined in Section 4.4.

1.116. "Tracking System" means the verification system that accounts for the generation, sale, purchase, and/or retirement of renewable energy and credits, which will be the North Carolina Renewable Energy Tracking System, administered by the Commission pursuant to the Act.

1.117. "Transmission Provider" means the entity or division within [Duke Energy Carolinas, LLC] [Duke Energy Progress, LLC] that will provide interconnection and/or electric distribution or transmission service to enable delivery of Energy generated by the Facility to Buyer, and any such entity or division will include any successor or replacement thereto, including without limitation, a consolidated control area or a regional transmission organization.

1.118. "Vintage" means the calendar year when the MWh of Energy is generated by the Facility, and therefore, when the REC associated with that MWh of Energy is generated by the Facility.

2. **Interpretation**

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

3. **Term and Termination**

3.1. **Term.** This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until the twenty-fifth (25th) anniversary of the Commercial Operation Date ("Term"), unless terminated earlier pursuant to the provisions of this Agreement.

- 3.2. Termination and Survival. This Agreement may be terminated earlier than the expiration of the Term as provided for herein. If this Agreement is terminated earlier than the expiration of the Term for any reason, including, without limitation, whether by its terms, mutual agreement, early termination, and/or event of default, such termination shall not relieve any Party of any obligation accrued or accruing prior to the effectiveness of such termination. Furthermore, any obligations, limitations, exclusions and duties which by their nature or the express terms of this Agreement extend beyond the expiration or termination of this Agreement, including, without limitation, provisions relating to compliance requirements, accounting, billing, billing adjustments, limitations or liabilities, dispute resolution, Performance Assurance, and any other provisions necessary to interpret or enforce the respective rights and obligations of the Parties hereunder, shall survive the expiration or early termination of this Agreement.
- 3.3. [FOR FACILITIES LOCATED IN SOUTH CAROLINA ONLY] Condition Precedent for Buyer. It is a condition to the continuing obligations of each Party under this Agreement that the Public Service Commission of South Carolina (the "PSC") shall have accepted this Agreement for filing with the PSC without any modification (unless such modification is acceptable to all the Parties), condition, suspension, or investigation. No later than ten (10) Business Days after both Parties have executed this Agreement, Buyer will submit the Agreement for filing with the PSC. Seller agrees that Buyer will have sole discretion over all aspects of such submittal, including without limitation, the form and substance of the submittal, confidentiality, procedure, responding to any data requests, and providing any information to the PSC and the South Carolina Office of Regulatory Staff. Seller will not oppose or challenge the PSC's acceptance of this Agreement, and upon request by Buyer will promptly and fully support the PSC's acceptance of this Agreement without any modification, condition, suspension, or investigation. Buyer will make a good faith request that the PSC and the South Carolina Office of Regulatory Staff keep confidential the terms and conditions of this Agreement; *provided, however*, Seller agrees and acknowledges that information (including Protected Information) contained in this Agreement may become public by its submission to the PSC and the South Carolina Office of Regulatory Staff, and Seller hereby consents to any such disclosure, without any reservations and without any prior notice to Seller. If the PSC issues an order or any other directive to modify, condition, suspend, or investigate any aspect of this Agreement prior to its acceptance that is not acceptable to all Parties, then this Agreement will immediately terminate, and upon any such termination neither Party shall have any obligation, duty, or liability to the other Party under this Agreement. In the event of such termination, each Party will retain its respective rights under PURPA. Buyer will provide notice to Seller after Buyer has received written notice of the PSC's determination in regard to Buyer's request that the PSC accept the Agreement for filing, and if such written notice from the PSC accepts this Agreement without any modification, condition, suspension, or investigation then Buyer will notify Seller that the condition precedent under this Section 3.3 has been satisfied.

4. **Purchase and Sale Obligations**

- 4.1. Delivery Period. The "Delivery Period" for the Product to be generated by the Facility and sold by Seller to Buyer shall be for all hours starting at 12:00:01 AM UTC on the Commercial Operation Date through the end of the Term, unless this Agreement is terminated earlier pursuant to its terms and conditions.
- 4.2. Vintage. The RECs shall be of the same Vintage as the MWh of Energy generated by the Facility, and the RECs shall arise due to the generation of Energy by the Facility.
- 4.3. Contract Quantity. The "Contract Quantity" will be one hundred percent (100%) of the Capacity, output of Energy, and associated RECs produced by the Facility, less that

associated with Station Power.

- 4.3.1. Seller shall sell and deliver the Contract Quantity of the Product exclusively and solely to Buyer. Seller's failure to generate, sell, and deliver the Contract Quantity of the Product to Buyer will be excused with no damages payable to Buyer solely to the extent such failure is due to a Permitted Excuse to Perform.
- 4.3.2. Except as set forth in Section 8.9.1, Buyer shall have no obligation to receive, purchase, pay for, or pay any damages associated with not receiving the Product due to a Permitted Excuse to Perform. Buyer shall have full and exclusive rights to the Product (inclusive of all components), and will be entitled to full and exclusive use of the Product (inclusive of all components) for its purposes and in its sole and exclusive discretion.
- 4.3.3. The estimated monthly and annual Energy production of the Facility during the Delivery Period is set forth in Exhibit 1 hereto.
- 4.4. Testing Period. Prior to the Facility's Commercial Operation Date Seller may test the capability of the Facility to operate and generate the Product in accordance with this Agreement (such operational period, the "Testing Period"). Seller shall provide Buyer with written notice of a date certain on which Seller desires to initiate the Testing Period. After the Facility has achieved the Commercial Operation Date, the Buyer shall, expressly subject to the limitations set forth below, purchase the Product produced by the Facility during the Testing Period at the applicable Contract Price set forth in Exhibit 2, but expressly subject to the Buyer fully satisfying the following conditions: (i) the Testing Period will be limited to sixty (60) days, but shall be extended day-to-day for any delays in completing testing and issuing the final permit to operate caused by the Buyer and which is not the result of Seller's acts or omissions; and; (ii) the RECs shall meet all of the requirements set forth in this Agreement; and, (iii) Seller shall certify in writing to Buyer, and to Buyer's satisfaction, together with supporting details, that each unit of the Product (including the associated REC) to be sold and purchased during the Testing Period was generated in compliance with the requirements of this Agreement. To the extent Seller is unable to satisfy the foregoing requirements; the Buyer shall purchase the Energy generated by the Facility at the rate for the Energy-only component of the Product set forth in Exhibit 2.
- 4.5. Contract Price.
- 4.5.1. Contract Price. The "Contract Price" for the Product shall be the price corresponding to the relevant portion of the Delivery Period as set forth in Exhibit 2 ("Part A").
- 4.5.2. Contract Price AdderAdjustment. As contemplated under the RFP, ~~if the Buyer elects to have the Seller fund the system upgrade costs associated with the Facility under the Interconnection Agreement, then~~ the Contract Price will be adjusted ~~to include the contract price adder~~ pursuant to the applicable price adjustment formula(s) specified in Exhibit 2 (individually and collectively, the "Contract Price ~~Adder~~Adjustment"), which shall be memorialized in writing signed by the Buyer and Seller. The Contract Price may be adjusted to account for the following charges, as may be applicable: (i) actual system upgrade costs (as established in the interconnection Final Accounting Report), and (ii) an amount, determined by Buyer in a commercially reasonable manner, to compensate Seller for upgrade carrying costs resulting from the estimated in-service date being beyond [11/30/2030], and which were not caused by Seller, its Affiliates or contractors. In order to effectuate ~~the~~ Contract Price ~~Adder~~Adjustment, Seller shall provide written notice to Buyer together with a copy of the ~~executed Interconnection Agreement~~interconnection Final Accounting Report documenting ~~that the system upgrades costs are being charged to Seller~~applicability of the Contract Price

Adjustment, as soon as reasonably possible after the ~~execution of the Interconnection Agreement~~Final Accounting Report has been tendered. The Contract Price ~~Adder~~ shall not be ~~added to the Contract Price~~modified or changed unless and until the Parties memorialize the adjusted Contract Price in ~~writing~~a written amendment in accordance with the terms of this Section 4.5.2.

- 4.6. Energy Delivery. Seller shall deliver the Contract Quantity of the Energy component of Product at the Delivery Point, and Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Energy to the Delivery Point. Except as set forth in Section 8.9.1, Buyer will have no obligation to pay for any Energy not delivered to the Delivery Point.
- 4.7. REC Delivery. Seller shall deliver to Buyer's Account the Contract Quantity of the REC component of the Product in the form of Certificates. Seller agrees that in addition to representing the attributes and characteristics under the Tracking System's operating rules and requirements, the Certificate will also represent the REC, Renewable Energy Attributes, and REA Reporting Rights as defined in this Agreement. No later than fourteen (14) calendar days after the meter data is delivered to Seller's Account, Seller shall review the meter data and complete all acts necessary to create the Certificates in the Tracking System and shall transfer the Certificates into Buyer's Account. Each Party shall establish an Account with the Tracking System for the creation, transfer, and/or receipt of the Certificates. Seller agrees to establish the Account for the Facility no later than fifteen (15) Business Days prior to the Commercial Operation Date.
- 4.8. Payment for Product. Buyer agrees to pay Seller for the Product generated and delivered in accordance with this Agreement by Seller to Buyer in accordance with the pricing set forth in Exhibit 2. Seller agrees that to the extent Buyer has already paid for the Product prior to Seller transferring the REC component of the Product in the manner noted above, Buyer shall have ownership of the REC component of the Product, and Seller shall hold the same in trust for Buyer until the transfer is completed as provided for herein. Buyer shall not be obligated to pay for any RECs for which the Certificates are not delivered to Buyer's Account.
- 4.9. Transfer. In no event shall Seller procure or have the right to procure the Product or any component of the Product from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Product sold and delivered hereunder shall transfer from Seller to Buyer, with respect to Capacity and Energy after completion of delivery at the Delivery Point and, with respect to RECs, after completion of transfer of the REC component of the Product to Buyer. Seller shall be responsible for any costs and charges imposed on or associated with the Product and the delivery of the Product at the Delivery Point and upon completion of transfer of the REC component. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point and after completion of transfer of the REC.

5. **Credit and Related Provisions.**

- 5.1. Pre-COD Performance Assurance Requirements. Subject to Section 5.3 below, no later than five (5) business days after the Effective Date, Seller shall provide and deliver to Buyer Performance Assurance in the form of cash or a Letter of Credit in the amount of *[4% x total projected revenue under the Agreement during the Term as determined by Buyer in its reasonable discretion – amount to be populated prior to execution. The total projected revenue shall be calculated based on the Part A portion of the RFP Bid and shall not include any Contract Price adders for network upgrades specified in Part B of the RFP Bid]*, as such Performance Assurance may be adjusted pursuant to Section 20.5.1. For

purposes of clarity, Seller shall not be permitted to provide a Guaranty as Performance Assurance for purposes of satisfying Seller's obligations under this Section 5.1.

- 5.2. Post-COD Performance Assurance. Subject to Section 5.3 below, after the Facility achieves Commercial Operation, Seller shall provide Buyer with Performance Assurance in the amount set forth in the below table corresponding to the applicable period during the Term of this Agreement. Seller may request and Buyer may, subject to Section 5.2, adjust the amount of such Performance Assurance within fifteen (15) Business Days of Seller's written request to coincide with the amount set forth in the below table. Seller's failure to provide the Performance Assurance and/or to maintain the Performance Assurance in the required amount and in full force and effect throughout the Term of this Agreement will be an Event of Default under this Agreement.

[Insert TABLE – Annual Performance Assurance - Post COD Performance Assurance shall be calculated by Buyer in a Commercially Reasonable Manner and shall equal 2% x total projected revenue under the Agreement during the Term. Table to be inserted prior to execution. *The total projected revenue shall be calculated based on the Part A portion of the RFP Bid and shall not include any Contract Price adders for network upgrades specified in Part B of the RFP Bid.*]

- 5.3. Unsecured Credit for Creditworthy Sellers. If Seller is Creditworthy and is not in default of any provisions under this Agreement the Seller shall be excused from the requirement to post Performance Assurance as required under Sections 5.1 and 5.2 above, as long as it remains Creditworthy. If at any time during the Term of this Agreement, Seller, or its Guarantor (if applicable), ceases to be Creditworthy due to a change in its Credit Rating, then Seller will notify Buyer of such change in its credit status and shall provide (or replace) Performance Assurance to Buyer in the amounts required under Section 5.1 or 5.2, as applicable, within five (5) Business Days after such change in its Credit Rating.
- 5.4. Financial Disclosures. If requested by Buyer, Seller shall timely provide to Buyer financial information of Seller as follows: (i) a copy of Seller's most recent quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Seller attesting to their accuracy; and, (ii) within 120 days after the end of each fiscal year that this Agreement is effective a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year. If Seller does not have audited financial statements, Seller shall deliver to Buyer financial statements in a form reasonably acceptable to Buyer and certified by a financial officer of Seller. All financial statements required hereunder shall be prepared in accordance with generally accepted accounting principles or other procedures with which Seller is required to comply with under applicable law. If information required under this Section 5.4 is available on a publicly available web site, then the delivery requirement shall be deemed to be satisfied.
- 5.5. 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 may be netted, offset, set off, or recouped therefrom, and payment shall be owed as set forth above. Unless Buyer notifies Seller in writing (except in connection with a liquidation and termination) all amounts netted pursuant to this section shall not take into account or include any credit support, which may be in effect to secure a Party's performance under

this Agreement. The netting set forth above, shall be without prejudice and in addition to any and all rights, liens, setoffs, recoupments, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement.

- 5.6. 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 (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 (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.
- 5.7. Performance Assurance Requirements. Seller shall ensure that the Performance Assurance in the required amount remains in full force, and effect, and outstanding for the duration required by this Agreement. All applicable Performance Assurance, in the amount required pursuant to the terms of this Agreement, shall remain in full force, and effect, and outstanding for the benefit of Buyer until sixty (60) days following the later of: (a) the end of the Term or (b) the date on which Seller has fully satisfied all obligations to Buyer under this Agreement (the "Security Period"). If at any time any Performance Assurance fails to meet any of the requirements under this Agreement, Seller shall replace such Performance Assurance with alternative Performance Assurance that meets each of the requirements under this Agreement. Seller will be solely responsible for any and all costs incurred with providing and maintaining any Performance Assurance to the full amount required by this Agreement. If Seller fails to replace, renew, or otherwise maintain the required Performance Assurance as and when required by this Agreement, then Buyer: (a) shall be entitled to draw and retain hereunder the full amount of the Performance Assurance; (b) shall not be obligated to make any further payments to Seller until Seller shall have provided Buyer with the replacement Performance Assurance; and, (c) shall be entitled to give Seller notice of an Event of Default and pursue the termination rights and remedies provided for in this Agreement.
- 5.8. Grant of Security Interest. To secure its obligations and liabilities under this Agreement to Buyer, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of netting and set-off against), and assignment of, all present and future Performance Assurance, including, without limitation, cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer; and, furthermore Seller agrees to take such actions as Buyer reasonably requires to perfect Buyer's first-priority security interest in, and lien on (and right of netting, recoupment, and set-off against), such Performance Assurance and any and all products and proceeds resulting therefrom or from the liquidation thereof, including without limitation proceeds of insurance. Upon or any time after the occurrence or deemed occurrence of an Event of Default or upon an Early Termination Date, Buyer (if it is the Non-Defaulting Party) may do any one or more of the following with respect to Seller (if it is the Defaulting Party): (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its

rights of netting, recoupment, and set-off against any and all property of Seller in the possession of Buyer or its agent; (iii) draw on any outstanding applicable forms of Performance Assurance provided for the benefit of Buyer; and, (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

6. Seller Compliance Requirements.

- 6.1. Required Approvals. Seller shall at its sole cost and expense timely obtain, maintain, and comply with all Required Approvals during the Term of this Agreement. Without limiting the generality of the following, "Required Approvals" means all of the following:
- 6.1.1. Commission approval and certification that the Facility is registered and certified as a New Renewable Energy Facility in compliance with the Act.
 - 6.1.2. All approvals and certifications that the Facility is a Qualifying Facility.
 - 6.1.3. All required Permits, authorizations, certifications, and/or approvals from any Governmental Authority and under any Requirements of Law, including, without limitation, from the Commission or FERC, for Seller to construct, build, own, operate, and maintain the Facility and sell and deliver the Product to Buyer.
- 6.2. Seller Covenants. Seller covenants to Buyer that it shall comply with all of the requirements of the Act and other Requirements of Law applicable to Seller, the Facility, and/or Seller's obligations under the Agreement. Without limiting the generality of the foregoing Seller represents and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that: (a) [prior to commencement of construction of the Facility Seller shall have obtained an approved and valid report of proposed construction or certificate of public convenience and necessity for the Facility from the [Commission] if not required delete and renumber accordingly]; (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 required approvals and certifications that the Facility is a Qualifying Facility from FERC. Seller agrees and acknowledges that Buyer has entered into this Agreement in reliance upon the representations and warranties set forth in this section, and in the event of a breach or failure of or relating to any of the foregoing covenants and warranties, including without limitation for being false or misleading in any respect, then this Agreement will terminate upon Buyer providing Seller with thirty (30) day's written notice unless such breach or failure has been cured before the end of such thirty (30) day period. Subject to Section 22.2, Seller will indemnify and hold Buyer harmless for any breach or failure relating to any of the foregoing covenants and warranties, notwithstanding anything else to the contrary in this Agreement.
- 6.3. Seller Requirements. Seller agrees and acknowledges that the Act requires Buyer to make certain filings and/or submissions relating to Buyer's obligations under the Act. Within twenty (20) Business Days of a written request from Buyer, Seller agrees to provide Buyer with all information, documents, and affidavits from a duly authorized representative of Seller certifying that the Facility fully complies with PURPA, including without limitation, the PURPA Fuel Requirements and that the Facility and/or the Product complies with the Act and the requirements of the Tracking System. If Seller fails to promptly provide Buyer with such documentation, and Buyer is unable to use the Product for compliance in the calendar year that Buyer desires to use such Product for compliance purposes, then Seller shall be liable to Buyer for cover cost damages as set forth in Section 21.

7. **Seller's Facility Requirements.**

7.1. **Seller Requirements.** Seller covenants (except to the extent expressly set forth in this Agreement) that: the Facility shall be designed, constructed, operated, controlled, maintained, and tested at Seller's sole cost and expense; the Facility shall be designed, constructed, operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, maintained, and tested by Seller to perform as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with the requirements of each applicable Requirements of Law and Prudent Utility Practice; and, that all contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the construction, ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, grading and building permits, and contracts and/or licenses to obtain the underlying fuel, install and operate the Facility, and deliver and sell the Product of the Facility) shall be timely obtained and maintained by Seller, at Seller's sole cost and expense. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility. Seller shall construct, interconnect, operate, and maintain the Facility in accordance with Prudent Utility Practice. Seller shall be responsible for all costs, charges, and expenses associated with generating, scheduling, and delivering the Energy to Buyer.

7.1.1. **Notice Requirement.** For each Operational Milestone, Seller shall deliver written notice to Buyer within five (5) Business Days of Seller having met such Operational Milestone. If Seller will be unable to timely meet any Operational Milestone, Seller shall also deliver written notice to Buyer informing Buyer that Seller will be unable to meet an Operational Milestone, but in any event Seller shall deliver notice to Buyer no later than five (5) Business Day after the due date of the Operational Milestone that Seller failed to achieve. Buyer shall have no obligation or liability to Seller for Buyer failing to advise Seller of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Buyer with respect to any Operational Milestone, the Facility, the System or any contractor.

7.2. **Seller Responsibilities.** Notwithstanding any provision of this Agreement to the contrary, the Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the design, development, construction, maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Governmental Authority on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances *inter alia* for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller.

7.2.1. **No Exclusions.** If any production or investment tax credit, grants, subsidy, or any other similar incentives or benefit relating, directly or indirectly, to the Facility is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; and, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all

risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.

- 7.3. Transmission Provider. Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement (or agreements) between Seller and Transmission Provider, and will exclusively govern all requirements and obligations between Seller and Transmission Provider. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible for under the Interconnection Agreement. Seller shall comply with all Interconnection Instructions.

7.3.1. Nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligation, and liabilities under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider, and the terms of this Agreement are not (and will not) be binding upon the Transmission Provider. Seller agrees and acknowledges that Seller's performance under this Agreement depends on Seller's performance under the Interconnection Agreement, and Seller hereby grants Buyer the right and entitlement to obtain information from the Transmission Provider in regard 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 Buyer and the System, and Seller agrees to fully comply with all System Operator Instructions.

- 7.5. Insurance Obligations. Commencing with the initiation of construction activities of the Facility and continuing until the termination of this Agreement, and at no additional cost to Buyer, Seller shall maintain or cause to be maintained by contracted parties at the Facility, occurrence form insurance policies as follows: (a) Workers' Compensation in accordance with the statutory requirements of the state in which the Services are performed and Employer's Liability Insurance of not less than \$500,000 each accident/employee/disease; (b) Commercial General Liability Insurance having a limit of at least \$1,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and damage to property, premises and operations liability and explosion, collapse, and underground hazard coverage; (c) Commercial/Business Automobile Liability Insurance (including owned (if any), non-owned or hired autos) having a limit of at least \$1,000,000 each accident for bodily injury, death, property damage and contractual liability; (d) Property Damage insurance on the Facility written on an all risk of loss basis; and, (e) if Seller will be handling or the Facility will have present environmentally regulated or hazardous materials, Pollution Legal Liability, including coverage for sudden/accidental occurrences for bodily injury, property damage, environmental damage, cleanup costs and defense with a minimum of \$1,000,000 per occurrence (claims-made form acceptable with reporting requirements of at least one (1) year). All insurance policies provided and maintained by Seller or applicable party shall: (i) be underwritten by insurers which are rated A.M. Best "A- VII" or higher; (ii) specifically include Buyer as additional insured's, excluding, however, for Worker's Compensation/Employer's Liability and Property Damage insurance; (iii) be endorsed to provide, where permitted by law, waiver of any rights of subrogation against Buyer; and (iv) provide that such policies and additional

insured provisions are primary and without right of contribution from any other insurance, self-insurance or coverage available to Buyer. Any deductibles or retentions shall be the sole responsibility of Seller or the applicable party. Seller's compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of Seller's liability pursuant to this Agreement. Any failure to comply with and these provisions shall not be deemed a waiver of any rights of Buyer under this Agreement or with respect to any insurance coverage required hereunder. Buyer at its sole discretion may request Seller to provide a copy of any or all of its required insurance policies, including endorsements in which Buyer is included as an additional insured for any claims filed relative to the Facility or this Agreement.

8. **Facility Performance Requirements**

- 8.1. **Planned Outages.** No later than fifteen (15) Business Days prior to the end of each year during the Term, Seller shall provide to Buyer a Planned Outage schedule for the upcoming year. Seller shall provide Buyer with reasonable advance notice of any material change in the Planned Outage schedule. Seller shall determine the number and extent of Planned Outages in a Commercially Reasonable Manner recognizing that it is the intent of the Parties to maximize production of the Facility and to such extent Seller shall be excused from providing the Product during such Planned Outage(s). Unless both Parties expressly agree otherwise, any Planned Outage shall only occur during the months of April, May or October, provided however, that Buyer shall not unreasonably withhold its consent to any Planned Outage reasonably requested by Seller that cannot reasonably be completed within the months of April, May or October.
- 8.2. **Maintenance Outages.** If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.
- 8.3. **Notice.** Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.
- 8.4. **Performance; Reactive Power.**
- 8.4.1. **Performance.** Seller shall act in a Commercially Reasonable Manner to maximize the output of the Facility in a safe manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the

Product, in each case consistent with Prudent Utility Practice.

8.4.2. Reactive Power. Buyer requires reactive power support at all hours of the day (including at night) and the Facility will follow a voltage schedule that is locally measured and controlled in accordance with Buyer's [North][South] Carolina Interconnection Procedures.

8.5. Output Requirement. Starting the first Contract Year after the Commercial Operation Date of the Facility, for each Contract Year during the Delivery Period, the Facility shall produce, as measured at the Delivery Point, not less than eighty five percent (85%) of the Expected Annual Output (the "Production Requirement") measured over each period of two consecutive Contract Years during the Delivery Period (the "Measurement Period"). Where a Permitted Excuse to Perform adversely affects actual generation output of the Facility, the Production Requirement shall be reduced by the amount of Energy not generated due to the Permitted Excuse to Perform; provided, however, that Seller agrees that it must demonstrate to Buyer, in Buyer's Commercially Reasonable discretion, that the Facility's generation output was reduced due to a Permitted Excuse to Perform. Buyer's sole remedy for Seller's failure to satisfy the Production Requirement during any Measurement Period shall be to receive a credit against the Contract Price for each month during the immediately following full Contract Year. The foregoing monthly credit to Buyer shall be determined by (a) multiplying (i) the difference between the Production Requirement and the actual Energy (expressed in MWh) delivered by Seller and received by Buyer during the applicable period by (ii) 40% of the average Contract Price for Energy delivered to Buyer in the previous 12 months, and (b) then dividing the amount calculated by (a) above by twelve (12) .

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

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

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

shall have full or incremental instantaneous control over the Facility to take any action based in any manner to implement or otherwise effectuate any System Operator Instruction.

- 8.8. Control Instructions. The System Operator shall be entitled to and is hereby authorized to require the Facility to take or to directly take all actions to dispatch or otherwise control the generation output and operations of the Facility for any Control Instruction. Except to the extent expressly set forth in Section 8.9, Seller shall not receive any compensation for any losses due to a Dispatch Down. Except as set forth in Section 8.9, all Seller losses for a Dispatch Down shall be borne solely and entirely by Seller, including, without limitation, for any losses arising due to the lost or reduced generation by the Facility, lost tax benefits, lost investment tax credits, grants or any other incentives or monetary opportunity relating to the design, development, generation from, construction, maintenance, ownership, or operation of the Facility.
- 8.9. Limited Payments for Control Instruction Dispatch Down. During any calendar year during the Term hereof, Seller shall not receive any compensation from Buyer for any Dispatch Down until the Dispatch Down of Energy exceeds [ten (10)% for DEP] [(5)% for DEC] of annual expected output for year one stated in whole MWhs] of Energy that the Facility would have generated but did not generate due to compliance with and implementation of Control Instructions (such quantity, the "Annual Payment Threshold"). For any partial calendar year during the Term hereof, the Annual Payment Threshold shall be ratably prorated for the number of days in such partial calendar year.
- 8.9.1. Control Compensation. In any calendar year, except as set forth in Section 8.10, after satisfaction of the Annual Payment Threshold, Seller shall receive compensation from Buyer for the Dispatch Down of Energy that the Facility would have generated but did not generate due to compliance with and implementation of Control Instructions, starting with the [insert amount specified in 8.9 + 1] MWh of Energy that is not so generated. Buyer shall calculate such amount payable to Seller by multiplying the Contract Price times the amount of Energy that could have been generated but was not generated due to compliance with and implementation of the Control Instruction ("Control Compensation"). The Control Compensation shall be determined using the Estimation Methodology set forth in Section 8.9.3. The Control Compensation shall be included in the invoice for the month of March commencing with the calendar year immediately following the first completed year of service and in each subsequent March invoice thereafter concluding with the calendar year immediately following the last completed year of service during the Term.
- 8.9.2. Limitations on Control Compensation. Buyer shall pay Seller a Control Compensation for the Dispatch Down of Energy if, and only if: (i) the Facility was generating or would have been generating (absent the Control Instruction) Energy at the time of the Control Instruction and meteorological and Facility operating conditions were such that the Facility would have actually reduced produced Energy at the time of the Dispatch Down instruction; (ii) the actual cumulative reduction of Energy generation by the Facility due to the Dispatch Down exceeds the Annual Payment Threshold for the calendar year; and, (iii) the Dispatch Down was due to a System Operator Instruction that was a Control Instruction, but not due to an Emergency Condition Instruction, Force Majeure Instruction, or Interconnection Instruction. The Control Compensation shall be Seller's sole and exclusive payment and remedy for compliance with the Control Instructions in excess of the Payment Threshold, and any and all other Seller losses or payments are expressly disclaimed

and waived.

8.9.3. Estimation Methodology. Buyer shall determine in a Commercially Reasonable Manner the quantity of Energy that could not be generated due to compliance with and implementation of the Dispatch Down instruction(s) based on: (i) The power plant controller output data points specified in Exhibit 9 attached hereto, which Seller shall provide to Buyer, on a real time basis, during the Term of this Agreement; (ii) the duration of the Dispatch Down; (iii) the amount of the generating capability of the Facility that is curtailed by the applicable Dispatch Down (e.g. 10% generation capability is curtailed); (iv) the solar exposure, irradiance, and meteorological circumstances actually recorded at the Facility during the Dispatch Down period; and (v) the Facility design, performance capability, and historic performance (the "Estimation Methodology"). Seller shall be responsible for installing and maintaining all equipment necessary to provide Buyer with the power plant controller output data points specified in Exhibit 9 on a real time basis. In the event that the real time data specified in 8.9.3(i) is unavailable historical production data required under Section 9.4.5 shall be used in its place. Absent manifest error, Buyer's calculations of the quantity of Energy that could not be generated due to compliance with and implementation of the Dispatch Down instruction(s) shall govern for purposes of determining Control Compensation.

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

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

~~8.11. Energy Storage. None. Section not used.~~

8.11. Liquidated Damages for Failure to Comply with Control Instruction. Notwithstanding any provision to the contrary and in addition to the other remedies under this Agreement, In the event that Seller fails to comply with any Control Instruction issued by the System Operator, including as a result of the disabling or inoperability of any Control Equipment, then Seller shall owe liquidated damages in the amount of [\$100 per MW of installed capacity of the Facility per day for any energy delivered to Buyer in violation of the control Instruction].

9. **Information Requirements**

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

verify, or otherwise validate or obtain Commission and/or any other third party recognition of the Product for use by Buyer.

9.3.1. Information Under the Act. Seller agrees and acknowledges that the Act requires Seller to make certain filings and/or submissions, including, without limitation, to maintain registration and certification of the Facility under the Act and to use the Product for compliance under the Act. Seller shall provide Buyer, for informational purposes only, a copy of any report, certification or filing that Seller submits to the Commission, within a reasonable time after making such submission, but in any event no later than five (5) Business Days after such submission. Notwithstanding anything to the contrary, Seller agrees and acknowledges that it shall be solely responsible for timely complying with all requirements under the Act.

9.4. Forecasts. Seller shall prepare and provide Buyer with the Facility's forecasted Energy production by fuel type, if applicable. These non-binding forecasts of production will be determined and prepared in a Commercially Reasonable Manner with the intent of being as accurate as possible. Seller shall update a forecast any time information becomes available indicating a material change in the forecast relative to the most previously provided forecast.

9.4.1. Year-Ahead Forecasts. Seller shall, by December 1 of each year during the Term (except for the last year of the Term), provide Buyer with a forecast of each month's average-day Energy production from the Facility, by hour, for the following calendar year. This forecast shall include an expected range of uncertainty based on historical operating experience. Seller shall update the forecast for each month at least five (5) Business Days before the first Business Day of such month.

9.4.2. Week-Ahead Forecasts. By 1200 UTC on the Friday preceding the immediately upcoming week of delivery, Seller shall provide Buyer with a daily forecast of deliveries for the upcoming week (Monday through Sunday).

9.4.3. Day-Ahead Forecasts. By 0900 UTC on the calendar day immediately preceding the day of delivery, Seller shall provide Buyer with an hourly forecast of deliveries for each hour of the next seven (7) days. In the event that Seller has any information or other Commercially Reasonable basis to believe that the production from the Facility on any day will be materially lower or higher than what would otherwise be expected based on the forecasts provided, then Seller will inform Buyer of such circumstance by 0900 UTC on the preceding Business Day.

9.4.4. Communication. Seller shall communicate forecasts in a form, template, substance, and manner as requested by Buyer (e.g. Excel template), which form, template, substance, and manner may be modified by Buyer from time to time. Forecasts shall be transmitted by email (to be sent to: RenewableEnergyForecast@duke-energy.com) or by other media (e.g. website upload), as Buyer may instruct Seller from time to time. Requested forecast data may include but is not limited to, location, forecast timestamp, site capacity, a flag for actual or forecasted data, available site capacity, energy, reason for any capacity reduction, site plane of array (POA) irradiance, air pressure, and relative humidity for each hour of the next seven days. Timestamps for forecast will be in Coordinated Universal Time (UTC).

9.4.5. History. Seller shall prepare and provide Buyer with the Facility's historical Energy production by fuel type, if applicable. The historical production will be determined and prepared by Seller in a Commercially Reasonable Manner with the intent of being as accurate as reasonably possible. Seller shall update any correction to the

history any time information becomes available.

9.4.5.1. Daily History. By 0500 UTC on the Business Day immediately following the day of delivery, Seller shall provide Buyer with an hourly profile of deliveries for each hour of the previous seven days.

9.4.5.2. History Communication. Seller shall communicate history in a form, template, substance, and manner as requested by Buyer (e.g. Excel template), which form, template, substance, and manner may be modified by Buyer from time to time. The History shall be transmitted by email (to be sent to: RenewableEnergyForecast@duke-energy.com) or by other media (e.g. website upload), as Buyer may instruct Seller from time to time. Requested historical data may include but is not limited to, location, site capacity, a flag for actual or forecasted data, available site capacity, energy generated, reason for any capacity reduction, site POA irradiance, air pressure, and relative humidity for each hour of the previous seven days.

10. Metering

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

11. Billing Period and Payment

11.1. Billing Period. Buyer shall read/obtain data from the Billing Meter at regular intervals, which shall be not less than twenty-seven (27) consecutive days and not more than thirty-three (33) consecutive days (each, a "Billing Period") except for the initial and final billing periods hereunder which may be shorter to permit the readings to otherwise coincide with calendar months. Within twenty-five (25) days after reading/obtaining data from the Billing Meter, Buyer shall provide Seller with an invoice detailing the amount of Product (Energy and an equal amount of RECs) delivered during the relevant Billing Period and the associated amount owed by Buyer to Seller for the Product, subject to Seller cooperating with Buyer and providing Buyer with such information and/or data that Buyer may request to accurately prepare the invoice. Buyer shall pay Seller the invoiced

- amounts for each Billing Period, subject to Seller having transferred (or caused to be transferred) the REC Certificates from Seller's Account to Buyer's Account in the Tracking System in accordance with the terms of this Agreement. Payment by Buyer shall be due by the later of thirty (30) days after the invoice date or fifteen (15) days after Buyer receives notification that the Seller has transferred the REC Certificates into Buyer's Account. If such amounts are not paid by the deadline, they shall accrue interest at the Interest Rate from the applicable due date until the date paid. Amounts not paid by such deadline shall accrue interest at the Interest Rate from the original due date until the date paid in accordance with this Agreement.
- 11.2. Meter Malfunction. In the event the Billing Meter fails to register accurately within the allowable accuracy limits as set forth above, then for purposes of preparing (or adjusting) any affected invoice Buyer shall adjust the amount of measured Energy for the period of time the Billing Meter was shown to be in error. If the time the Billing Meter became inaccurate can be determined, then the adjustment to the amount of measured Energy shall be made for the entire time from the time that the Billing Meter became inaccurate until the recalibration of the Billing Meter. If the time the Billing Meter became inaccurate cannot be determined, then the Billing Meter shall be deemed to have failed to register accurately for fifty percent (50%) of the time since the date of the last calibration of the Billing Meter.
- 11.3. Out-of-Service. If the Billing Meter is out of service, then for purposes of preparing any affected invoice, the Parties shall negotiate in good faith to determine an estimate of the amount of Energy delivered during the relevant Billing Period. Seller's meter (if any), may be used to establish such estimate, if both Parties agree. If, within twenty (20) days after the date that the Billing Meter is read as set forth above, the Parties have not reached agreement regarding an estimate of the amount of Energy delivered during the relevant Billing Period, then the amount of Energy delivered during the relevant Billing Period shall be determined using the Estimation Methodology.
- 11.4. Errors. If any overcharge or undercharge in any form whatsoever shall at any time be found for an invoice, and such invoice has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within forty-five (45) days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twenty-four (24) months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated at the Interest Rate from the date that the undercharge or overcharge actually occurred.
- 11.5. Invoice/Payment Dispute. If a Party in good faith reasonably disputes the amount set forth in an invoice, charge, statement, or computation, or any adjustment thereto, such Party shall provide to the other Party a written explanation specifying in detail the basis for such dispute. The Party disputing the invoice, if it has not already done so, shall pay the undisputed portion of such amount no later than the applicable due date. If the Parties are thereafter unable to resolve the dispute through the exchange of additional documentation, then the Parties shall pursue resolution of such dispute according to the dispute resolution and remedy provisions set forth in the Agreement. Notwithstanding any other provision of this Agreement to the contrary, if any invoice, statement charge, or computation is found to be inaccurate, then a correction shall be made and payment (with applicable interest) shall be made in accordance with such correction; provided, however, no adjustment shall be made with respect to any invoice, statement, charge, computation

or payment hereunder unless a Party provides written notice to the other Party questioning the accuracy thereof within twenty-four (24) months after the date of such invoice, statement, charge, computation, or payment.

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12. **Audit Rights**

- 12.1. Process. Buyer shall have the right, at its sole expense and during normal business hours, without Seller requiring any compensation from Buyer, to examine and copy the records of Seller to verify the accuracy of any invoice, statement, charge or computation made hereunder or to otherwise verify Seller's performance under this Agreement, including, without limitation, verifying that the delivered Product complies with the Agreement.
- 12.2. Survival. All audit rights shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months after the expiration or termination. Seller shall retain any and all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

13. **Taxes**

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

14. **Force Majeure**

- 14.1. Definition. "Force Majeure" means: (A) war, riots, epidemics, pandemics, and plagues (including relating to COVID-19), floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, excessive winds, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (C) insurrection, rebellion, nationwide strikes; (D) an act of god or other such significant and material event or circumstance which prevents one Party from performing a material and significant obligations hereunder, which such event

or circumstance was not anticipated as of the Effective Date, is not within the Commercially Reasonable control of, or the result of the 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 to the extent caused 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 regional or 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, that is not caused by an independent Force Majeure event; (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 that is not caused by an independent Force Majeure event; (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 14.1(E)); (o) Seller's failure to obtain, or perform under, the Interconnection Agreement, or its other contracts and obligations to Transmission Provider; or (p) increased cost of electricity, steel, materials, equipment, labor, or transportation.
- 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 five (5) Business Days of 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. The burden of proof for demonstrating that an event of Force Majeure has occurred shall be on the Party claiming relief under this Agreement based on an event of Force Majeure.

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 one hundred eighty (180) 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; *provided, however*, that where the Force Majeure event cannot be remedied within one hundred eighty (180) days and the claiming Party can demonstrate to the non-claiming Party its intention and ability to implement a Commercially Reasonable plan to remedy such Force Majeure event within an additional one hundred eighty (180) days after the initial one hundred eighty (180) day period and the claiming Party uses Commercially Reasonable efforts to implement such plan, the non-claiming Party shall not have the right to terminate the Agreement until the expiration of such additional one hundred eighty (180) day period.

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, 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 reasonable 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. Confidentiality

- 16.1. Protected Information. Except as otherwise set forth in this Agreement, neither Party (the "Receiving Party") shall, without the other Party's (the "Disclosing Party") prior written consent, disclose any Protected Information (as defined below) of the Disclosing Party to any third person (other than the Party's employees, affiliates, advisors, counsel, accountants, and current and prospective lenders and investors in the Facility who have a need to know such information, have agreed to keep such terms confidential, and for whom the Party shall be liable in the event of a breach of such confidentiality obligation), at any time during the Term or for five (5) years after the expiration or early termination of this Agreement. As used herein the term "Protected Information" means (a) this Agreement, and (b) any proprietary information of the Disclosing Party disclosed in connection with this Agreement, including without limitation, proposals and negotiations whether disclosed prior to or after the date hereof that have been clearly marked as confidential or proprietary. Notwithstanding anything to the contrary herein: (i) The Seller hereby acknowledges and agrees that its participation in an RFP or award of a contract thereunder may be disclosed by Buyer or the Independent Evaluator of the RFP in one or more reports issued at the conclusion of the RFP process or as required under the rules of the RFP without the consent of the Seller; and (ii) in no event will Protected Information include the concept of constructing or providing energy from a power plant, using any specific fuel source, in any specific location. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief,) to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding any other provision of this Agreement, any claim related to or arising out of any confidentiality obligations herein may be brought directly in any state or federal court of competent jurisdiction in [DEP - Wake County, North Carolina] [DEC - Mecklenburg County, North Carolina], in accordance with Section 26.5 of this Agreement, and shall not be subject to dispute resolution or arbitration pursuant to Section 23 of this Agreement.
- 16.2. Non-Confidential Information. Protected Information does not include information: (i) that is or becomes available to the public other than by disclosure of Receiving Party in breach of this Agreement; (ii) known to Receiving Party prior to its disclosure; (iii) available to Receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the Receiving Party without reliance upon the Protected Information.
- 16.3. Return of Confidential Information. Upon request of the Disclosing Party, the Receiving Party shall either (i) return the Disclosing Party's Protected Information, including all copies, or (ii) destroy the Disclosing Party's Protected Information, including all copies, and present written assurances of the destruction to Disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained

electronically (including e-mails) may be automatically archived and stored by the Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy any Protected Information stored on Back-Up Tapes; provided, however, any Protected Information of the Disclosing Party not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the Receiving Party may retain one (1) copy of such Protected Information in Receiving Party's files solely for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.

- 16.4. Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to the limitations set forth herein, disclose Protected Information to comply with the Act, request of any Governmental Authority, applicable Requirements of Law, or any exchange, control area or System operator rule, in response to a court order, or in connection with any court or regulatory proceeding. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the receiving Party agrees to give disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Confidential Information. Such notice by the receiving Party shall give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to seek a protective order or similar relief, and the receiving Party shall not oppose such request or relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of receiving Party's notice, receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of receiving Party's legal counsel; provided, however, receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Information so disclosed.
- 16.5. Regulatory Disclosures by Buyer. This Section 16.5 will apply notwithstanding anything to the contrary in this Agreement. Seller acknowledges that Buyer is regulated by various regulatory and market monitoring entities. Buyer is permitted, in its sole discretion, to disclose or to retain and not destroy (in case of a future disclosure need as determined by Buyer in its sole discretion) any information (including Protected Information) to any regulatory commission (inclusive of the NCUC, SCPSC, FERC), NERC, market monitor, office of regulatory staff, and/or public staff, or any other regulator or legislative body without providing prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for any such disclosures or retentions in its sole discretion. In the event of the establishment of any docket or proceeding before any regulatory commission, public service commission, public utility commission, or other agency, tribunal, or court having jurisdiction over Buyer, the Protected Information shall automatically be governed solely by the rules and procedures governing such docket or proceeding to the extent such rules or procedures are additional to, different from, or inconsistent with this Agreement. In regulatory proceedings in all state and federal jurisdictions in which Buyer does business, Buyer will from time-to-time be required to produce Protected Information, and Buyer may do so without prior notice to Seller or consent from Seller, using Buyer's business judgment, and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. When a request for disclosure of information, including Protected Information, is made to Buyer, Buyer may disclose the information, including Protected Information, without prior notice to the Seller

or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Duke seeks for such disclosures in its sole discretion. Seller further acknowledges that Buyer is required by law or regulation to report certain information that could embody Protected Information from time-to-time, and Buyer may from time-to-time make such reports, without providing prior notice to Seller or consent from Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion.

17. Mutual Representations and Warranties

17.1. As of the Effective Date (or other date specified herein) 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. It 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;
- 17.1.8. It is a "forward contract merchant" and this Agreement constitutes a "forward contract" as such terms are defined in the United States Bankruptcy Code;
- 17.1.9. It is, or shall be as of the Commercial Operation Date, an "eligible commercial entity" within the Commodity Exchange Act;
- 17.1.10. It is, or shall be as of the Commercial Operation Date, an "eligible contract participant" within the Commodity Exchange Act; and;

- 17.1.11. 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.

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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. No Product (including any REC) has been, or will be, sold (other than to Buyer hereunder), retired, claimed, represented as part of any electricity output, use, or sale, or otherwise used to satisfy any renewable energy, efficiency, emissions, and/or offset obligation under the Act, or under any voluntary or mandatory standard, marketplace, or jurisdiction, or otherwise by Seller;
 - 18.1.2. All Product (including every REC) will meet the specifications and requirements in this Agreement, including without limitation, compliance with the Act;
 - 18.1.3. Each unit of the Product will be and was generated during the applicable Vintage;
 - 18.1.4. Seller has provided and conveyed and will provide and convey to Buyer all Capacity rights associated with the Facility and all Energy produced by the Facility;
 - 18.1.5. Seller has provided and conveyed and will provide and convey to Buyer all Renewable Energy Attributes and REA Reporting Rights associated with all Energy generated by the Facility as part of the Product being delivered to Buyer;
 - 18.1.6. 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;
 - 18.1.7. Seller has not and will not double sell, double claim or any manner otherwise double count the Product (including, without limitation, any Capacity of the Facility or any REC, Renewable Energy Attributes, or REA Reporting Rights) in any manner (including, for example, by issuing a press release or otherwise claiming that Seller is creating any environmental benefit, using a renewable energy source, or selling renewable energy (in each case inclusive of thermal energy) to any person other than exclusively to and for the benefit of Buyer); Seller will not claim to for itself any of the Renewable Energy Attributes, "green energy", "clean energy", "carbon-free energy" or other rights sold to Buyer, in any public communication concerning the output of the Facility, the Facility or the RECs;
 - 18.1.8. Seller shall at all times be fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated, and;
 - 18.1.9. Seller has not and will not in any manner interfere with, encumber or otherwise impede Buyer's use, transfer, and sale of any 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 following, 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 under Section 6.2 (Seller Covenant) 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. Seller fails to comply with Section 7.1.1 and such failure is not remedied within three Business Days after Seller's receipt of written notice from Buyer.
- 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. If Seller, after construction of the Facility has begun but prior to the construction being completed (and, for the avoidance of doubt, prior to the Commercial Operation Date) ceases all construction, designing, development, testing, operations, and other activity on, for, or of the Facility for more than sixty (60) consecutive days; *provided, however*, that such cessation shall not be deemed an Event of Default if Seller can make a Commercially Reasonable demonstration to Buyer, in Buyer's Commercially Reasonable discretion, that in spite of such cessation the Facility will achieve Commercial Operation by the Commercial Operation Date as it may be extended pursuant to the terms of Section 20.5;
- 19.8. Seller fails to fully and timely achieve any of the Operational Milestone Schedule events (other than the Commercial Operation Date that is governed exclusively by Section 19.9 and 20.5); *provided, however*, that such failure shall not be deemed an Event of Default if Seller can make a Commercially Reasonable demonstration to Buyer, in Buyer's Commercially Reasonable discretion, that in spite of missing the Milestone Deadline the Facility will achieve Commercial Operation by the Commercial Operation Date as it may be extended pursuant to the terms of Section 20.5.
- 19.9. Seller fails to achieve Commercial Operation by the Commercial Operation Date (unless excused as a result of Force Majeure in accordance with article 14), as it may be extended pursuant Section 20.5;
- 19.10. Seller withdraws at any time from the interconnection queue study process as specified in the RFP prior to Seller executing an Interconnection Agreement;
- 19.11. The actual Nameplate Capacity Rating of the Facility is higher than the Nameplate Capacity Rating set forth in Exhibit 4, or, as of the Commercial Operation Date is lower than the Nameplate Capacity Rating by more than five (5) percent of the Nameplate Capacity Rating set forth in Exhibit 4.
- 19.12. Seller Abandons the Facility for more than sixty (60) consecutive days;
- 19.13. Seller fails to obtain or maintain the Facility's registration or certification as a Qualifying Facility under PURPA and such failure is not cured within thirty (30) days after Seller's receipt of written notice from Buyer.
- 19.14. Seller fails to obtain or maintain the Facility's registration as a New Renewable Energy Facility, and such failure is not cured within thirty (30) days after Seller's receipt of written notice from Buyer.
- 19.15. Seller fails to fully comply with the PURPA Fuel Requirements.
- 19.16. Seller delivers or attempts to deliver to Buyer any Product (or any component thereof)

that was not generated by the Facility.

- 19.17. Seller delivers or attempts to deliver any Product (or component thereof) to any entity or person other than to the Buyer.
- 19.18. Seller fails to promptly and fully comply with a System Operator Instruction.
- 19.19. Seller fails to provide, replenish, renew, or replace the Performance Assurance in accordance with the requirements of this Agreement and/or otherwise fails to fully comply with the credit related requirements of this Agreement, including without limitation, Section 5, and any such failure is not cured within five (5) Business Days.
- 19.20. 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 after Seller's receipt of written notice from Buyer.
- 19.21. Seller adds an energy storage device to the Facility without obtaining Buyer's prior written consent.
- 19.22. A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and: (i) 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; or (ii) the resulting, surviving, transferee or successor entity fails to meet the Creditworthiness standards or, alternatively, post-Performance Assurance as required under this Agreement.
- 19.23. An assignment by a Party or Change of Control with respect to Seller, other than in compliance with Section 24;
- 19.24. A Party becomes Bankrupt;
- 19.25. 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;
- 19.26. Seller violates the publicity obligations set forth in Section 26.10;
- 19.27. The Generating Facility fails to produce at least seventy percent (70%) of the Expected Annual Output in any period Measurement Period; and
- 19.28. 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 sixty (60) days after the Defaulting Party's receipt of written notice, provided that, if, despite the non-performing Party's diligent efforts, such Party is unable to remedy such failure in such sixty (60) day period but reasonably believes it is able to remedy such failure if given an additional thirty (30) day period, then after such additional thirty (30) day period.

20. **Early Termination.**

20.1. **Early Termination.**

- 20.1.1. **Termination Due to Default.** If an Event of Default with respect to a Defaulting Party has occurred and is continuing, 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").

- 20.1.2. Buyer's Limited Termination Right. If the Parties have entered into this Agreement prior to the execution of a Interconnection Agreement between Seller and the Transmission Provider, Buyer shall have the right to terminate this Agreement by providing written notice of termination to Seller if the Transmission Provider's cost for the estimated network upgrades specified in the completed, executable version of the Interconnection Agreement is greater than 125% of the estimated cost of these network upgrades calculated during Phase 1 of the Resource Solicitation Cluster (the "Excess Network Upgrade Costs"). Buyer may elect to terminate the Agreement, as permitted in this Section 20.1.2, by providing written notice ("Buyer's Termination Notice") to Seller no later than ten (10) Business Days after Buyer has submitted the completed execution version of the Interconnection Agreement for the Facility to Seller. Buyer's Termination Notice shall include documentation demonstrating that the conditions required under this Section 20.1.2 have been met. Buyer's termination pursuant to this Section 20.1.2 shall be effective as of the date specified in Buyer's Termination Notice which has been provided to Seller. Upon termination of the Agreement pursuant to the terms of this Section 20.1.2, neither Party shall have any further liability or obligations under this Agreement. If Buyer fails to provide Seller with a Buyer's Termination Notice, as required above, within the time period required under this Section 20.1.2, Buyer will be deemed to have waived its termination right hereunder and the Agreement will continue in full force and effect and each Party shall continue to be obligated to perform in accordance with the terms of this Agreement.
- 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 upon or 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 five (5) Business Days of delivery to the Defaulting Party of the notice of the Net Settlement Amount that the Defaulting Party is liable for. Notwithstanding anything to the contrary set forth herein, and as contemplated under Section 20.5, if Seller is the Defaulting Party and an Early Termination Date is established under this Section 20.3 prior to the Facility having achieved Commercial Operation, then the Net Settlement Amount shall equal the Default Liquidated Damages as

specified in Section 20.5.1

20.4. Payment. Any Net Settlement Amount will only be due and payable only 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.

20.5. Commercial Operation Date Liquidated Damages.

20.5.1. Failure to Achieve First COD Date. Notwithstanding anything to the contrary in this Agreement, to the extent an Event of Default occurs due to Seller's failure to timely achieve the Commercial Operation Date (unless excused as a result of Force Majeure in accordance with article 14) as set forth in Exhibit 3 (the "First COD Date"), then this Agreement shall terminate and Seller shall be liable to Buyer for liquidated damages in the amount of $[4\% \times \text{total projected revenue under the Agreement during the Term as determined by Buyer in its reasonable discretion}]$ U.S. dollars (\$_____) (the "Default Liquidated Damages") which shall be due and payable by Seller within five (5) Business Days after the First COD Date; provided however, if no later than twenty (20) Business Days prior to the First COD Date Seller notifies Buyer in writing that Seller reasonably believes that it will be unable to achieve Commercial Operation by the First COD Date and Seller also notifies Buyer in writing that Seller desires to continue performance under this Agreement, then this Agreement shall remain in full force and effect and upon payment of liquidated damages to Buyer in the amount of [25% of the Default Liquidated Damages] (the "Initial Liquidated Damages") within five (5) Business Days after the First COD Date, Seller shall have up to an additional one hundred eighty (180) days from the First COD Date to achieve Commercial Operation (such extended date, the "Second COD Date"); provided however, no Initial Liquidated Damages shall be due to Buyer if Seller actually achieves Commercial Operation on or before the First COD Date.

20.5.2. Second COD Date. If Seller achieves Commercial Operation on or before the Second COD Date Seller shall pay Buyer additional liquidated damages, within five (5) Business Days of achieving the Second COD Date, in the amount of [75% of the Default Liquidated Damages divided by 180] [U.S. _____dollars (\$_____)] per day (the "Per Diem Liquidated Damages") for each day that Commercial Operation was delayed beyond the First COD Date up to and including the one hundred eightieth (180th) day following the First COD Date as per diem liquidated damages for failing to timely achieve Commercial Operation by the First COD Date.

20.5.3. Failure to Achieve Second COD Date. If Seller fails to achieve Commercial Operation by the Second COD Date (i.e., within one hundred eighty (180) days following the First COD Date) then this Agreement will terminate and Seller will be liable to Buyer and will pay Buyer, within five (5) Business Days of such failure, additional liquidated damages (in addition to the Initial Liquidated Damages paid under Section 20.5.1) in the amount of [the Default Liquidated Damages [75% of

the Default Liquidated Damages_____ U.S. dollars
(\$_____)].

20.5.4. Exclusive Remedy. The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if Seller does not achieve Commercial Operation by the promised Commercial Operation Date. Accordingly, the Parties agree that if Seller does not meet the promised Commercial Operation Date (as may be extended under this Section 20.5), Buyer's sole remedy for that delay shall be to recover from Seller as liquidated damages, and not as a penalty, the amount of liquidated damages specified in this Section 20.5. The agreed upon delay liquidated damages shall not limit Buyer's remedies for other breaches, actions or omissions of Seller under this Agreement.

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

21. Cover Costs.

21.1. Exclusive Remedies. Except where a specific and exclusive remedy is otherwise set forth in this Agreement, 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 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 two (2) times the per unit Contract Price.

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 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 two (2) times the per unit Contract Price.

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, COVER COSTS, 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 a direct loss, 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. Demand for Arbitration.

23.2.1. If a Dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party's initial notice, the Parties shall fully and finally settle the Dispute by binding arbitration administered by the American Arbitration Association ("AAA"), or such other nationally recognized arbitration association or organization as the Parties may mutually agree. The Arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules then in effect, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. To the extent the AAA Rules conflict with any provision of Section 23 of this Agreement, the terms of this Agreement shall govern and control.

23.2.2. Either Party may serve the demand for arbitration on the other Party; provided, however, no demand for arbitration shall be made or permitted after the date when the institution of a civil action based on the Dispute would be barred by the applicable statute of limitations or repose.

23.2.3. All arbitration proceedings shall take place in [DEC - Charlotte] [DEP - Raleigh], North Carolina.

23.2.4. A single arbitrator will arbitrate all Disputes where the amount in controversy is less than five-hundred thousand U.S. dollars (\$500,000), and will be selected by the Parties or by the AAA if the Parties cannot agree to the arbitrator. Such arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry. The cost of the arbitrator(s) shall be borne equally by the Parties.

23.2.5. A panel of three (3) arbitrators will conduct the proceeding when the amount in controversy is equal to or more than five hundred thousand U.S. dollars (\$500,000). If the Parties have not so agreed on such three (3) arbitrator(s) on or before thirty (30) days following the delivery of a demand for Arbitration to the other Party, then each Party, by notice to the other Party, may designate one arbitrator (who shall not be a current or former officer, director, employee or agent of such Party or any of its Affiliates). The two (2) arbitrators designated as provided in the immediately preceding sentence shall endeavor to designate promptly a third (3rd) arbitrator.

23.2.6. If either Party fails to designate an initial arbitrator on or before forty five (45) days following the delivery of an arbitration notice to the other Party, or if the two (2) initially designated arbitrators have not designated a third (3rd) arbitrator within thirty (30) days of the date for designation of the two (2) arbitrators initially designated, any Party may request the AAA to designate the remaining arbitrator(s) pursuant to its Commercial Arbitration Rules. Such third (3rd) arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry.

23.2.7. If any arbitrator resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party entitled to designate that arbitrator shall designate a successor.

23.3. Discovery. Either Party may apply to the arbitrators for the privilege of conducting discovery. The right to conduct discovery shall be granted by the arbitrators in their sole discretion with a view to avoiding surprise and providing reasonable access to necessary information or to information likely to be presented during the course of the arbitration,

- provided that such discovery period shall not exceed sixty (60) Business Days.
- 23.4. Binding Nature. The arbitrator(s)' decision shall be by majority vote (or by the single arbitrator if a single arbitrator is used) and shall be issued in a writing that sets forth in separately numbered paragraphs all of the findings of fact and conclusions of law necessary for the decision. Findings of fact and conclusions of law shall be separately designated as such. The arbitrator(s) shall not be entitled to deviate from the construct, procedures or requirements of this Agreement. The award rendered by the arbitrator(s) in any arbitration shall be final and binding upon the Parties, and judgment may be entered on the award in accordance with applicable law in any court of competent jurisdiction.
- 23.5. Consolidation. No arbitration arising under the Agreement shall include, by consolidation, joinder, or any other manner, any person not a party to the Agreement unless (a) such person is substantially involved in a common question of fact directly relating to the Dispute; provided however, such person will not include any Governmental Authority, (b) the presence of the person is required if complete relief is to be accorded in the arbitration, and (c) the person has consented to be included.
- 23.6. Mediation. At any time prior or subsequent to a Party initiating arbitration, the Parties may mutually agree to (but are not obligated to) attempt to resolve their Dispute by non-binding mediation, using a mediator selected by mutual agreement. The mediation shall be completed within thirty (30) Business Days from the date on which the Parties agree to mediate. Unless mutually agreed by the parties, any mediation agreed to by the Parties shall not delay arbitration. The Parties shall pay their own costs associated with mediation and shall share any mediator's fee equally. The mediation shall be held in Raleigh, North Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction.
- 23.7. Remedies. Except for Disputes regarding confidentiality arising under Section 16 of this Agreement, 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). Preservation of these remedies does not limit the power of the arbitrator(s) to grant similar remedies, and despite such actions, the Parties shall continue to participate in and be bound by the dispute resolution procedures specified in Section 23.
- 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, 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 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 Performance Assurance in the amount required under this Agreement, and such enforceability assurance as the Buyer may request in its Commercially Reasonable discretion. Notwithstanding anything to the contrary herein, Buyer may pledge, encumber, or assign this Agreement without the consent of Seller to any Person that is Creditworthy, or that has provided Seller with a guaranty substantially in the form of Exhibit 6 from a Creditworthy credit support provider guaranteeing the assignee's obligations hereunder, and that has agreed in writing to assume the obligations of Buyer hereunder.
- 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 or compromise, modify or affect any rights, benefits or risks of Buyer under this Agreement.
- 24.3. Acknowledgement of Non-Default. Provided that Seller is not in default of its obligations under this Agreement, upon reasonable request by Seller, Buyer will execute a written acknowledgement of non-default in the form of Exhibit 8 attached hereto (the "Acknowledgement") which shall be based on the actual knowledge of Buyer's personnel responsible for administering the Agreement at the time of the execution of the Acknowledgement and after due inquiry of Buyer's internal records only. Notwithstanding any provision to the contrary set forth in the Acknowledgment, Buyer reserves all rights and defenses available to it under the Agreement, and nothing stated therein shall be deemed to have waived, amended or modified any such rights or defenses. In no event shall the issuance of any Acknowledgement introduce any third party to this Agreement or create any rights, including third party beneficiary rights for any Person under this Agreement.
- 24.4. 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.
- 24.5. 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 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.

- 24.6. Cost Recovery. Without limiting Buyer's rights under this Section 24, to the extent Buyer agrees to a request from Seller for one or more consent(s) to Assignment or Change of Control under this Agreement, Seller shall pay Buyer ten thousand dollars (\$10,000) prior to Buyer processing Seller's request.

25. **Notices**.

- 25.1. Process. All notices, requests, or invoices shall be in writing and shall be sent to the 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.

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, except that the cost of the arbitrator(s) will be allocated equally between the Parties as provided in Section 23. Notwithstanding the foregoing, in the event that the Commission is required to adjudicate any Disputes related to this Agreement and the Independent Evaluator's fees and costs related to such Dispute exceed program fees collected from Market Participants (as defined in the RFP), the non-prevailing party shall be responsible for all excess Dispute-related fees and costs incurred by the Independent Evaluator in connection with the Dispute.
- 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 customer 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 [SOUTH 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. Except for Disputes that are subject to Arbitration as provided herein, 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 [DEP - Wake County, North Carolina] [DEC Mecklenburg County, North Carolina]. The Parties hereto irrevocably consent to the jurisdiction of any federal or state court within in [DEP - Wake County, North Carolina] [DEC Mecklenburg 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 that is not subject to Arbitration shall occur in federal or state court in [DEP - Wake County, North Carolina] [DEC - Mecklenburg 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 output (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 at a price that exceeds the Contract Price. 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. Seller authorizes the Buyer to record notice of the foregoing in the real estate records.

- 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. Publicity.
- 26.10.1. Limitation on Seller. Seller shall not make any announcement or release any information concerning or otherwise relating to this Agreement to any member of the public, press, Person, official body, or otherwise without Buyer's prior written consent, which shall not be unreasonably withheld; provided, however, any content approved by Buyer shall be limited to the non-confidential facts of the Agreement and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 26.10.2. Limitation on the Parties. Neither Party shall make any use of the other Party's name, logo, likeness in any publication, promotional material, news release, or similar issuance or material without the other Party's prior review, approval, and written consent. Seller agrees and acknowledges that any reference or likeness to "Duke" shall be a prohibited use of Buyer's name, logo, likeness. Seller agrees and acknowledges that any direct or indirect implication of any endorsement, partnership, support, or testimonial of Seller by Buyer is prohibited, and any such use, endorsement, partnership, support, and/or testimonial will be an Event of Default under this Agreement. Subject to the foregoing, either Party may disclose to the public general information in connection with the Party's respective business activities; *provided, however,* no such disclosure or publicity by Seller will directly or indirectly imply any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 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.]

OFFICIAL COPY

Apr 12 2024

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

[DUKE ENERGY CAROLINAS, LLC]
[DUKE ENERGY PROGRESS, LLC]

BY: _____
NAME: _____
TITLE: _____
DATE: _____

SELLER _____

BY: _____
NAME: _____
TITLE: _____
DATE: _____

OFFICIAL COPY

Apr 12 2024

Exhibit 1

Estimated Monthly Energy Production of the Facility (to be completed by Seller)

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

OFFICIAL COPY

Apr 12 2024

Exhibit 2

Contract Price [to be completed by Buyer]

The Contract Price (Section 4.5.1) shall be as follows:

<u>Relevant Portion of the Delivery Period</u>	<u>"Part A" Contract Price</u>
Years 1-25	

The Contract Price Adder ("Part B") in Section 4.5.2 shall be as follows:
[insert Part B bid price in \$/MWh]

The Contract Price ~~Adder~~Adjustments if applicable under Section 4.5.2 shall be as follows:

- (i) Network Upgrade Cost Adder shall be calculated in accordance with the following formula:
[(insert Part B Bid Price (\$/MWh)) x (actual upgrade costs specified in the Final Accounting Report
+ applicable Carrying Cost interest from (ii) below) / \$1 million
- (ii) Carrying Cost Adjustment shall be calculated in accordance with the following formula:
[Carrying Cost Interest Rate applied to the amount of time past 11/30/2030 to Assumed In Service
Date and the Network Upgrade deposit paid = Carrying Cost interest]

Where:

"Assumed In Service Date" is the sooner of the original Interconnection Facilities and System
Upgrades In-Service Date ("ISD") established in the Interconnection Agreement or the actual ISD. If
the Seller requests an extension of the ISD and an amendment to the IA is made based on the
request of the Seller, the "Assumed In Service Date" used will be the original ISD and not the
extension.

Carrying Cost Interest Rate means: the lesser of 5% or the average Interest Rate as defined in 1.62
annualized.

Interest rate is applied to Network Upgrade deposit paid, as specified in the Interconnection
Agreement.

Carrying Cost Interest will be added to the actual upgrade costs specified in the Final Accounting
Report in order to calculate the Network Upgrade Cost Adder (as describe in (i)).

Exhibit 3

Operational Milestone Schedule [to be completed by Seller for Buyer's approval]

Deadline	Performance/Result Seller Must Timely Achieve
As required under applicable interconnection procedures	Interconnection Agreement Executed
Please provide date	Financing Milestone Commitment
Please provide date	Substation Pad Complete
Please provide date	Required Permits and Approval Deadlines
Please provide date	Commencement Readiness Requirements
90 calendar days after the Interconnection Facilities and System Upgrades In-Service Date, and extended day-to-day for any delays not caused by the Seller.	Commercial Operation Date

1. **Financing Milestone Commitment.** If third party financing is being obtained by Seller to construct the Facility, Seller shall deliver to Buyer a letter of commitment for full project financing meeting all of the minimum requirements set forth below, as determined by Buyer in Buyer's sole Commercially Reasonable discretion. Buyer has no responsibility or obligation of any kind to Seller or any other person or entity with respect to Seller in connection with Seller's financing or the Financing Milestone Commitment.
 - 1.1. Fully-underwritten and binding (not "best efforts," a term sheet, or some lesser commitment).
 - 1.2. In an amount that is, along with fully underwritten and committed equity, adequate funding for the construction and operation of the project.
 - 1.3. Full agreement of the lender and Seller with respect to term, interest rates, fees and other economics of the lending transaction.
 - 1.4. Lender has approved the form of the power purchase agreement, turbine/panel supply agreement, engineering procurement and construction contract and other significant project agreements, subject only to the execution and delivery of those documents, as well as the construction budget for the project, and that the lender has completed all necessary due diligence.
 - 1.5. Lender retains no further approval rights with respect to size, site or technical aspects of the project.
 - 1.6. Free of conditions to effectiveness relating to further equity commitments, the confirmation of tax attributes, the approvals of other public or private third parties or the satisfactory completion of third party reports or assessments (environmental, insurance or otherwise).

- 1.7. Not require any bonds or performance guarantees that have not already been obtained.
- 1.8. No general condition to financing that the lender be satisfied with the project in its discretion.
- 1.9. Fully executed by the lender and the Seller.
2. If Seller (or its Affiliate) is balance sheet financing the construction of the Facility, Seller shall satisfy this Financial Milestone Commitment by delivering to Buyer evidence of Seller's, or its Affiliate's, approval for funding in an amount adequate for the construction of the Facility.
3. **Substation Pad Complete.** Substation pad, access roads, and right-of-way built and cleared by Seller. As-built surveys (provided by a licensed surveyor) and substation pad civil tests complete and accepted by Buyer.
4. **Required Permits and Approval Deadlines.** Seller shall deliver to Buyer a list of required Permits and deadlines to secure each of those Permits. Seller shall identify and list all Permits customary and necessary for Seller to design, construct, test, commission, and fully operate the Facility. Seller shall also identify and list the deadline by which Seller must secure all final Permits for Seller to achieve the Commercial Operation Date set forth above in this Exhibit 3 and such final deadline shall be deemed to be a Milestone Deadline. Seller shall keep Buyer informed of its efforts to secure the Permits. For each identified Permit, Seller shall provide Buyer written notice, and any supporting documentation requested by Buyer in its Commercially Reasonable Discretion, that the identified Permits have been obtained, including, without limitation, any approvals from the local Governmental Authority approving the land use, site plan and construction of the Facility.
5. **Commencement Readiness Requirements.** Seller shall deliver to Buyer the list of major development and construction activities, together with deadlines for the commencement and successful completion of those activities for Seller to achieve the Commercial Operation Date set forth in this Exhibit 3. The list of major development and construction activities, together with commencement and completion deadlines, shall include each of the activities set forth below. Each such major development and construction activity shall be deemed to be an Operational Milestone, and the deadline by which Seller must successfully complete each such activity for Seller to achieve the Commercial Operation Date set forth in this Exhibit 3 shall be deemed to be a Milestone Deadline. For each identified activity, Seller shall provide Buyer written notice, and any supporting documentation requested by Buyer in its Commercially Reasonable Discretion, that the identified activity has been commenced and/or successfully completed.
 - 5.1. Proof of Seller's rights and interest in the site upon which the Facility is to be constructed, including the applicable sale agreement or long-term lease.
 - 5.2. Delineation of any long lead-time procurement items, including a schedule for ordering and proof of such activity.
 - 5.3. A project key milestone schedule, reflecting the critical milestone events for design and construction of the facility including the date upon which Seller shall achieve: thirty and ninety percent detailed design; site mobilization and commencement; mechanical completion; substantial completion; and final completion.
 - 5.4. Identification of Seller's key personnel, with primary responsibility for the design and construction of the Facility and communications with Buyer.
 - 5.5. Seller's operations and maintenance plan.
 - 5.6. Seller's performance and capacity testing plan and performance guarantees, in which Seller defines the performance output requirements of the Facility and describes the procedures and timing for all testing that will be conducted to demonstrate whether the Facility meets the applicable performance requirements and conditions.
 - 5.7. Seller shall be in compliance with the milestone schedule set forth in the Interconnection Agreement and shall be on schedule to achieve Commercial Operation by the Commercial Operation Date.

Exhibit 4

Facility Information [to be completed by Seller for Buyer's approval]

The Facility covered under this Agreement is hereby identified as follows:

1. Facility Name:
2. Facility Address:
3. Description of Facility (include number, manufacturer and model of Facility generating units, and layout):
4. Nameplate Capacity Rating (MW): AC and DC:
5. Fuel Type/Generation Type:
6. Site Map (include location and layout of the Facility, equipment, and other site details):
7. Delivery Point Diagram (include Delivery Point, metering, Facility substation):
8. Control Equipment. Subject to final approval by Buyer as of the date of final execution of the Interconnection Agreement, the following control equipment shall be installed at the Facility: A Power Plant Controller (PPC) which includes all features required to comply with this Agreement and the Interconnection Agreement, including, but not limited to, active power control (dispatch), power factor set point control, voltage schedule set point control, active power ramp rates, and frequency response control (from regulation signal sent from System Operator). Set points such as active power control, as required by this Agreement, will be made available to Buyer via a hard-wired DNP3 path at the Facility's Point of Interconnection. Remote access to the Facility's HMI (the Plant Controller Interface) will be given for control of the required variables, by the Buyer
9. Storage Resources. None

UPON EXECUTION OF THE AGREEMENT TO WHICH THIS EXHIBIT IS ATTACHED, ANY MATERIAL MODIFICATION TO THE FACILITY SHALL REQUIRE BUYER'S PRIOR APPROVAL, AND SHALL BE MEMORIALIZED IN WRITING IN AN AMENDMENT TO THE AGREEMENT.

Exhibit 5
Expected Annual Output [to be completed by Seller]

[Insert table]

Exhibit 6
Form of Guaranty

THIS GUARANTY AGREEMENT (this "Guaranty"), dated as of [date], is issued and delivered by [**enter corporate legal name**], a [state] [form of entity] (the "Guarantor"), for the account of [**enter corporate name**], a [state] [form of entity] (the "Obligor"), and for the benefit of [**enter corporate name**], a [state] [form of entity] (the "Beneficiary").

Background Statement

WHEREAS, the Beneficiary and Obligor entered into that certain _____ dated (the "Agreement"); and

WHEREAS, Beneficiary has required that the Guarantor deliver to the Beneficiary this Guaranty as an inducement to enter into the Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the Guarantor hereby agrees as follows:

1. Guaranty; Limitation of Liability. Subject to any rights, setoffs, counterclaims and any other defenses that the Guarantor expressly reserves to itself under this Guaranty, the Guarantor absolutely and unconditionally guarantees the timely payment of the Obligor's payment obligations under the Agreement (the "Guaranteed Obligations"); provided, however, that the Guarantor's aggregate liability hereunder shall not exceed [amount] **U. S. Dollars (U.S. [\$xx,xxx,xxx])**.

Subject to the other terms of this Guaranty, the liability of the Guarantor under this Guaranty is limited to payments expressly required to be made under the Agreement, and except as specifically provided therein, the Guarantor shall not be liable for or required to pay any consequential or indirect loss (including but not limited to loss of profits), exemplary damages, punitive damages, special damages, or any other damages or costs.

2. Effect of Amendments. The Guarantor agrees that the Beneficiary and the Obligor may modify, amend and supplement the Agreement and that the Beneficiary may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Beneficiary.

3. Waiver of Rights. The Guarantor expressly waives (i) protest, (ii) notice of acceptance of this Guaranty by the Beneficiary, and (iii) demand for payment of any of the Guaranteed Obligations.

4. Reservation of Defenses. Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses that the Obligor may have to payment of all or any portion of the Guaranteed Obligations except defenses arising from the bankruptcy, insolvency, dissolution or liquidation of the Obligor and other defenses expressly waived in this Guaranty.

5. Settlements Conditional. This guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any monies paid to the Beneficiary in reduction of the indebtedness of the Obligor under the Agreement have to be repaid by the Beneficiary by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force, and the liability of the Guarantor under this Guaranty shall be computed as if such monies had never been paid to the Beneficiary

6. Notice. The Beneficiary will provide written notice to the Guarantor if the Obligor defaults under the Agreement.

7. Primary Liability of the Guarantor. The Guarantor agrees that the Beneficiary may enforce this Guaranty without the necessity at any time of resorting to or exhausting any other security or collateral. This is a continuing Guaranty of payment and not merely of collection.

8. Representations and Warranties. The Guarantor represents and warrants to the Beneficiary as of the date hereof that:

- a. The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;
- b. The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- c. All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- d. This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

9. Nature of Guaranty. The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the Obligor under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by Beneficiary concerning any provisions of the Agreement; the rendering of any judgment against the Obligor or any action to enforce the same; any failure by Beneficiary to take any steps necessary to preserve its rights to any security or collateral for the Guaranteed Obligations; the release of all or any portion of any collateral by Beneficiary; or any failure by Beneficiary to perfect or to keep perfected its security interest or lien in any portion of any collateral.

10. Subrogation. The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Guaranteed Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Guaranteed Obligations, the Guarantor shall be subrogated to the rights of Beneficiary

against the Obligor, and Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. Term of Guaranty. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all the Guaranteed Obligations have been discharged, and (ii) [date] (the "Expiration Date"); provided however, the Guarantor will remain liable hereunder for Guaranteed Obligations that were outstanding prior to the Expiration Date.

12. Governing Law. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to principles of conflicts of law.

13. Expenses. The Guarantor agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel) relating to the enforcement of the Beneficiary's rights hereunder in the event the Guarantor disputes its obligations under this Guaranty and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that the Beneficiary is entitled to receive payment of a portion of or all of such disputed amounts.

14. Waiver of Jury Trial. The Guarantor and the Beneficiary, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

15. Entire Agreement; Amendments. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary.

16. Headings. The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

17. No Third-Party Beneficiary. This Guaranty is given by the Guarantor solely for the benefit of the Beneficiary, and is not to be relied upon by any other person or entity.

18. Assignment. Neither the Guarantor nor the Beneficiary may assign its rights or obligations under this Guaranty without the prior written consent of the other, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Beneficiary may assign this Guaranty, without the Guarantor's consent, provided such assignment is made to an affiliate or subsidiary of the Beneficiary.

Any purported assignment in violation of this Section 18 shall be void and without effect.

19. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing or sent by electronic mail to the Guarantor or to the Beneficiary, as applicable, at its address as indicated below:

If to the Guarantor, at:

[Guarantor name]
[Address]
Attention: [contact]
Email:[email address]

With a copy to:

[Seller name]
[Address]
Attention: [contact]
Email:[email address]

If to the Beneficiary, at:

[Beneficiary name]
[Address]
Attention: [contact]
Email:[email address]

or such other address as the Guarantor or the Beneficiary shall from time to time specify. Notice shall be deemed given (a) when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail or (b) when received, as evidenced by email confirmation, if sent by email and received on or before 4 pm local time of recipient, or (c) the next business day, as evidenced by email confirmation, if sent by email and received after 4 pm local time of recipient.

OFFICIAL COPY

Apr 12 2024

IN WITNESS WHEREOF, the Guarantor has executed this
Guaranty as of the day and year first above written

[Guarantor name]

By: _____
Name:
Title:

OFFICIAL COPY

Apr 12 2024

Exhibit 7
Form of Letter of Credit

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: _____

Date: _____

Beneficiary:

[Insert Buyer Name from PPA]
Attn: Chief Risk Officer (ST30)
400 S. Tryon Street
Charlotte, North Carolina 28202

Ladies and Gentlemen:

By the order of:

Applicant:

We hereby issue in your favor our irrevocable standby letter of credit No.: _____ for the account of _____ for an amount or amounts not to exceed _____ US Dollars in the aggregate (US\$ _____) available by your drafts at sight drawn on [Issuing Bank] effective _____ and expiring at our office on _____ (the "Expiration Date").

The Expiration Date shall be deemed automatically extended without amendments for one year from the then current Expiration Date unless at least ninety (90) days prior to the then applicable Expiration Date, we notify you in writing by certified mail return receipt requested or overnight courier that we are not going to extend the Expiration Date. During said ninety (90) day period, this letter of credit shall remain in full force and effect.

Funds under this letter of credit are available against your draft(s), in the form of attached Annex 1, mentioning our letter of credit number and presented at our office located at [Issuing Bank's address must be in US] and accompanied by a certificate in the form of attached Annex 2 with appropriate blanks completed, purportedly signed by an authorized representative of the Beneficiary, on or before the Expiration Date in accordance with the terms and conditions of this letter of credit. Partial drawings under this letter of credit are permitted.

Certificates showing amounts in excess of amounts available under this letter of credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this letter of credit.

We engage with you that drafts drawn under and in conformity with the terms of this letter of credit will be duly honored on presentation if presented on or before the Expiration Date. Presentation at our office includes presentation in person, by certified, registered, or overnight mail.

Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [Issuing Bank] under this letter of credit is the individual obligation of [Issuing Bank] and is in no way contingent upon reimbursement with respect hereto.

This letter of credit is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 ("ISP98"). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.

We shall have a reasonable amount of time, not to exceed three (3) business days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly.

Kindly address all communications with respect to this letter of credit to [Issuing Bank's contact information], specifically referring to the number of this standby letter of credit.

All banking charges are for the account of the Applicant.

This letter of credit may not be amended, changed or modified without our express written consent and the consent of the Beneficiary.

This letter of credit is transferable, and we agree to consent to its transfer, subject to our standard terms of transfer and your payment to us of our standard transfer fee.

Very truly yours
[Issuing Bank]

Authorized Signer

Authorized Signer

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 1

FORM OF SIGHT DRAFT

[Insert date of sight draft]

To: *[Issuing Bank's name and address]*

For the value received, pay to the order of _____ by wire transfer of immediately available funds to the following account:

[name of account]
[account number]
[name and address of bank at which account is maintained]
[aba number]
[reference]

The following amount:

[insert number of dollars in writing] United States Dollars
(US\$ *[insert number of dollars in figures]*)

Drawn upon your irrevocable letter of credit No. *[irrevocable standby letter of credit number]*
dated *[effective date]*

[Beneficiary]

By: _____
Title: _____

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 2

FORM OF CERTIFICATE

[Insert date of certificate]

To: *[issuing bank's name and address]*

[check appropriate draw condition]

[] An Event of Default (as defined in the [Name of Agreement between [Beneficiary's Name] and [Insert Counterparty's Name] dated as of _____ (the "Agreement")) has occurred with respect to [Counterparty's Name] and such Event of Default has not been cured within the applicable cure period, if any provided for in the Agreement.

Or

[] [Counterparty's Name] is required, pursuant to the terms of the Agreement, to maintain a letter of credit in favor of [Beneficiary's Name], has failed to renew or replace the Letter of Credit and the Letter of Credit has less than thirty (30) days until the expiration thereof.

[Beneficiary]

By: _____
Title: _____

Exhibit 8
Acknowledgement of Non-Default

[Print Duke Energy letterhead]

Date:

Address of Seller

Re: Acknowledgement of Non-Default (the “Acknowledgement”) of the Renewable Power Purchase Agreement, between [Duke Energy Carolinas, LLC] [Duke Energy Progress, LLC] (“Buyer”) and [insert Seller name] dated as of _____ (the “Agreement”).

Dear Sir or Madam:

The undersigned, a duly authorized representative of Buyer hereby acknowledges to Seller as follows:

1. The copy of the Agreement attached hereto as Exhibit A (including any amendments thereto) constitutes a true and complete copy of the Agreement;
2. Buyer has not transferred or assigned its interest in the Agreement; and
3. as of the date of this Acknowledgement based on the actual knowledge of Buyer’s personnel responsible for administering the Agreement after due inquiry of Buyer’s internal records only, there is no current Event of Default by Seller or Buyer under the Agreement, nor to Buyer’s knowledge, has any event or omission occurred which, with the giving of notice or the lapse of time or both, would constitute an Event of Default under the Agreement and the Agreement is in full force and effect.

Notwithstanding any provision to the contrary set forth herein, Buyer reserves all rights and defenses available to it under the Agreement and nothing stated herein shall be deemed to have waived, amended or modified any such rights or defenses.

Except as specified herein to the contrary, capitalized terms used in this Acknowledgement shall have the meaning ascribed to such terms in the Agreement.

Sincerely,

[Duke Energy Carolinas, LLC][[Duke Energy Progress, LLC]

By: _____

Name:

Title:

Exhibit 9

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Apr 12 2024

Power Plant Controller Output Points			
Analog	Units of Measure	Accuracy	Notes
Estimated Unit Active Power Operating High Limit		± 5 %	Estimated Generation currently possible given current equipment status, equipment characteristics, and current ambient conditions. Calculation based on site rating, percentage of inverters in service, POA irradiance, DC/AC ratio, ambient conditions, etc.
Estimated Unit Active Power Operating Low Limit		± 5 %	Estimated Minimum Generation currently possible given current equipment status, equipment characteristics, and current ambient conditions. Calculation based on site rating, percentage of inverters in service, POA irradiance, DC/AC ratio, ambient conditions, etc.
AMBIENT TEMPERATURE - Average of all measurements available at facility with logic to eliminate any inputs with suspect data quality	Degree F	± 1°	Average Ambient temperature at all weather stations
BACKPANEL TEMPERATURE - Average of all measurements available at facility with logic to eliminate any inputs with suspect data quality	Degree F	± 1°	Average of all Temperature sensors mounted behind solar
Plane Of Array Irradiance - Average of all Meters available at facility with logic to eliminate any inputs with suspect data quality	Watts/Sq. Meter	± 25 W/m ²	Measured with Class II pyranometers or equivalent equipment. For fixed-tilt sites, the sensor shall be mounted on a meteorological station facing the same angle and direction as the solar photovoltaic panels at the site. For tracking sites, the sensor shall be mounted on a tracker to be oriented at the same angle and direction as the solar photovoltaic panels at the site.
Net active power generation to GSU		MW	The generation resource's 3 phase active power output measured at the low side of the step-up transformer.
Net Reactive power generation to GSU		MVAR	The generation resource's 3 phase reactive power output measured at the low side of the step-up transformer.
Global Horizontal Irradiance - Average of all Meters available at facility with logic to eliminate any inputs with suspect data quality	Watts/Sq. Meter	± 25 W/m ²	Measured with a Class II pyranometer or equivalent equipment. The sensor shall be mounted on a metrological station set at the global horizontal angle of the earth in reference to the sun solar radiation.
A phase current		AMP	Phase A Amps measured on the low side of the step-up transformer.

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Apr 12 2024

B phase current		AMP	Phase B Amps measured on the low side of the step-up transformer.
C phase current		AMP	Phase C Amps measured on the low side of the step-up transformer.
Line to Line Voltage A-B		kV	Phase A to Phase B Voltage line to line voltage measured on the low side of the step-up transformer.
Total number of facility inverters in operational ready status			Sum of total facility inverters in operation
Solar Plant Active Power Setpoint		MW	Solar Plant Supervisory Control System Active Power Setpoint
Solar Plant Active Power Ramp Rate		MW/Min	Solar Plant Supervisory Control System Active Power Ramp Rate
Plant Point of Interconnection Voltage Setpoint		KV	Solar Plant Control System POI Voltage Control Setpoint (KV)
Plant Point of Interconnection Voltage Setpoint Deadband		KV	Solar Plant Control System POI voltage control deadband (KV)
Digital (Binary)	Status	Accuracy	Notes
PV Generator Remote ECC POI Setpoint Mode Status			Enabled/Disabled - Solar Plant curtailment control operational status
PV Generator Automatic Voltage Regulation Status			ON/OFF
PV Generator Low Tension Circuit Breaker Status			OPEN/CLOSED; if multiple LT breakers connect to the GSU transformer, this point value shall be a logical OR of all applicable solar facility LT breakers
Solar Plant Owned GSU High Tension Circuit Breaker Status (if applicable, project specific)			OPEN/CLOSED

Power Plant Controller Input Points – Analog	Status	Accuracy	Notes
PV Generator Real Power Setpoint			Duke Energy Control Center maximum allowed MW delivery at Point of Interconnection. Normally equal to Interchange Agreement defined rated POI capacity limit unless ECC requires curtailment action at POI. Delivery to plant DNP Client system will be via DNP Server analog input mapped from ECC setpoint in RTAC configuration.

Attachment 4

Redline of SPS PPA to 2023 RFP pro forma
SPS PPA

Duke Energy Carolinas, LLC
Duke Energy Progress, LLC
Docket No. E-2 Sub 1340
Docket No. E-7 Sub 1310

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



RENEWABLE POWER PURCHASE AGREEMENT

(~~20~~~~—~~2024 Solar Paired with Storage RFP)

Buyer: [Duke Energy Carolinas, LLC] [[Duke Energy Progress, LLC]

525 South Tryon Street
DE Plaza 12th Floor
Charlotte, North Carolina 28202
Charlotte, NC 28201-1006
Attn.: Contract Manager
PPA@duke-energy.com

*With Additional Notices of Events of Default
Or Potential Event of Default to:*
525 South Tryon Street. MC: DEP-09B
Charlotte, North Carolina 28202
Attn.: VP, Transactional Legal Support

Seller: _____

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

RECITALS

WHEREAS, the Seller was selected as a winning bidder under the Request for Proposals for the 20232024 Solar Resource Procurement issued on [_____] (the "RFP") by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC; and

WHEREAS, the Parties desire to enter into this Agreement to document the terms and conditions pursuant to which Seller shall construct, own and operate the Facility (as defined herein) and Buyer shall purchase the Product (as defined herein) produced by the Facility in accordance with the terms specified herein.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, for good and valuable consideration, the sufficiency of which is acknowledged, and intending to be bound hereby, the Parties agree as follows:

1. Definitions

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

- 1.1 "AAA" is defined in Section 23.2.1.
- 1.2 "Abandon(s)" means the relinquishment of control or possession of the Facility and/or cessation of operations of or at the Facility by Seller. "Abandon" excludes cessation of generation to comply with Prudent Utility Practices, Permitted Excuse to Perform, or due to maintenance or repair of the Facility (including Maintenance Outages and Planned Outage), provided that such maintenance or repair activities are being performed in a Commercially Reasonable Manner and with Prudent Utility Practice.
- 1.3 "Account" means a Party's electronic account with the Tracking System.
- 1.4 "Act" means the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard, N.C. Gen. Stat. 62-133.8, including all rules promulgated by the Commission associated therewith, as each may be amended or modified from time-to-time, and any successor renewable energy standards, statutes, regulations, or rules.
- 1.5 "Additional or Secondary Revenue Quality Meter" is defined in Section 10.2.
- 1.6 "Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, or otherwise have control of an entity, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the

foregoing, (i) with respect to Buyer the term Affiliate does not include Seller or any subsidiaries or affiliates whose activities are subject to the oversight or regulation of any state commission(s) and/or federal energy regulatory commission, and (ii) with respect to Seller the term Affiliate does not include Buyer.

- 1.7 "Agreement" is defined in the introductory paragraph hereof.
- 1.8 "Assignment" is defined in Section 24.1.
- 1.9 "Auxiliary Power" means the Energy used to energize and operate the Facility's ancillary equipment, used on-site to supply the Facility's auxiliary load and parasitic load and/or for powering the electric generation equipment. Auxiliary Power shall not include any Station Power, Grid Charging Energy, Charging Energy, or Discharging Energy.
- 1.10 "Back-Up Tapes" is defined in Section 16.3.
- 1.11 "Bankrupt" means, with respect to a Party or any Affiliate of such Party that is currently acting as its credit support provider, that such Party or Affiliate acting as credit support provider: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law 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 sixty (60) 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, or enforced 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).
- 1.12 "BESS" means battery energy storage system.
- 1.13 "Billing Meter" is defined in Section 10.
- 1.14 "Billing Period" is defined in Section 11.
- 1.15 "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.
- 1.16 "Buyer" shall have the meaning specified in the first paragraph of this Agreement.
- 1.17 "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.
- 1.18 "Certificate" means the electronic instrument created and issued by the Tracking System.

- 1.19 "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 directly or indirectly acquire (i) fifty percent (50%) or more of the voting interests in Seller or (ii) substantially all of the assets of Seller. Notwithstanding the foregoing, a Change of Control shall not be deemed to occur based on a transaction or series of transactions pursuant to which (a) the ultimate parent of the Seller (as of the Effective Date or most recent permitted Change of Control) directly or indirectly retains fifty percent (50%) or more of the voting interests in Seller or substantially all of its assets; (b) the ultimate parent of Seller directly or indirectly retains managerial control of Seller and the right through Seller to use, operate and maintain the Facility to generate energy and to sell the Product as contemplated in this Agreement; (c) there occurs any direct or indirect transfer of shares of, or equity interests in, Seller to a tax equity investor so long as the ultimate parent of Seller retains the ability to directly or indirectly control the management and policies of Seller; or (d) a Permitted Transfer has occurred; provided that in the case of clauses (a) or (b), Seller has provided Buyer no less than thirty (30) days prior written notice of such reorganization and in the case of a Permitted Transfer to the Lenders, Seller promptly provides Buyer with written notice of the completion of the transfer and in any case no more than thirty (30) days thereafter.
- 1.20 "Charging Energy" means all energy provided by the Generating Facility, net of transformation and transmission losses, if any, that is a result of a Charging Notice given by Buyer. All Charging Energy shall be used for Buyer's benefit in accordance with Charging Notices and Discharging Notices given by Buyer.
- 1.21 "Charging Notice" means the operating instruction and any subsequent updates, given by Buyer or System Operator to Seller, using Control Equipment or other means as provided for herein, directing delivery of Charging Energy or Grid Charging Energy, as specified by Buyer, to the Storage Facility to charge at a specific rate to a specified Stored Energy Level, provided that any operating instruction shall be in accordance with the Storage Operating Procedures. For the avoidance of doubt, any Buyer request to initiate a Storage Energy Capacity Test shall not be considered a Charging Notice.
- 1.22 "Commercial Operation" means that the Facility is operational and placed into service such that all of the following have occurred and remain simultaneously true and accurate: (a) the Facility has been constructed, tested, and is fully capable of operating for the purpose of generating the Product and delivering as required herein; (b) the Facility has received written authorization from the Transmission Provider for interconnection and synchronization of the Facility with the System; (c) the Facility has obtained all necessary Permits and Required Approvals; and (d) the Facility has met all requirements necessary for safely and reliably generating the Product and delivering the Product to Buyer in accordance with Prudent Utility Practice.
- 1.23 "Commercial Operation Date" means the date on which the Facility achieves or achieved Commercial Operation.
- 1.24 "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.

- 1.25 "Commission" means the North Carolina Utilities Commission or any successor thereto.
- 1.26 "Contract Price" is defined in Section 4.5.1.
- 1.27 "Contract Quantity" is defined in Section 4.3.
- 1.28 "Control Compensation" is defined in Section 8.9.1.
- 1.29 "Control Equipment" is defined in Section 8.7.
- 1.30 "Contract Year" means a calendar year; provided, however, that to the extent that this Agreement terminates on a day other than December 31 of a calendar year, the last Contract Year shall be the period commencing at the start of hour ending 01:00 EPT on January 1 of the calendar year during which the termination occurs and ending at the conclusion of hour ending 24:00 EPT on the termination date.
- 1.31 "Control Instruction" means any System Operator Instruction to dispatch, operate, and/or control the Facility in the same manner and/or for any reason as the System Operator may, in its sole discretion, dispatch, operate, and/or control Buyer's own generating resources and power purchase arrangements used to provide service to Buyer's native load customers.
- 1.32 "Coordinated Universal Time" or "(UTC)" is the basis for civil time today. This 24-hour time standard is kept using highly precise atomic clocks combined with the Earth's rotation referenced at zero (0) degree longitude, or prime meridian, and is not adjusted for daylight saving time.
- 1.33 "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.
- 1.34 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.

- 1.35 "Creditworthy" or "Creditworthiness" - means (i) a Person with an investment grade Credit Rating from two (2) of the three (3) Rating Agencies such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least (A) BBB- by S&P, if rated by S&P, (B) Baa3 by Moody's, if rated by Moody's, and (C) BBB- by Fitch, if rated by Fitch, respectively, or (ii) has satisfactory and verifiable creditworthiness determined in Buyer's reasonable discretion.
- 1.36 "Cycle(s)" means the Discharging Energy divided by the Storage Energy Capacity Rating multiplied by the four- (4-) hour battery duration. For clarity, 1-Cycle is executed when the cumulative measured Discharging Energy is equal to the Storage Energy Capacity Rating multiplied by the four (4) hour battery duration. The annual number of Cycles shall not exceed 365 in a normal Contract Year or 366 in a Contract Year that is a leap year.
- 1.37 "Default Liquidated Damages" is defined in Section 20.5.1.
- 1.38 "Defaulting Party" is defined in Section 19.
- 1.39 "Delivery Period" is defined in Section 4.1.
- 1.40 "Delivery Point" means the point of interconnection between the Facility and the System on the high side (Buyer or Transmission Provider side) of the System.
- 1.41 "Discharging Energy" means all Energy discharged by the Storage Facility pursuant to a Discharging Notice, less inverter, transformation and transmission losses, if any, and delivered to the Delivery Point.
- 1.42 "Discharging Notice" means the operating instruction and any subsequent updates, given by Buyer to Seller, using Control Equipment or other means provided for herein, directing the Storage Facility to discharge Discharging Energy at a specific rate to a specified Stored Energy Level, provided that any operating instruction shall be in accordance with the Storage Operating Procedures. For the avoidance of doubt, any Buyer request to initiate a Storage Energy Capacity Test shall not be considered a Discharging Notice.
- 1.43 "Dispatch Down" means any reduction or cessation of Energy generation by the Facility in response to an order or instruction by or direct action taken by the System Operator.
- 1.44 "Disputes" is defined in Section 23.1.
- 1.45 "Early Termination Date" is defined in Section 20.1.
- 1.46 "Effective Date" is defined in the introductory paragraph hereto.
- 1.47 "Emergency Condition" means, no matter the cause: (a) any urgent, abnormal, operationally unstable, dangerous, or public safety condition that is existing on the System or any portion thereof; (b) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) loss or damage to the Facility or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on, to or of the System, or (iv) condition that may result in endangerment of human life or public safety; or (c) any

circumstance that requires action by the System Operator to comply with standing NERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to the Facility, loss or damage to the System, disruption of generation by the Facility, disruption of service on the System, an abnormal condition on the System, and/or endangerment to human life or safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or Seller's failure to perform as required under this Agreement.

- 1.48 "Emergency Condition Instruction" means any System Operator Instruction relating to, due to, in response to, or to address an Emergency Condition.
- 1.49 "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh.
- 1.50 "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.
- 1.51 "Estimation Methodology" is defined in Section 8.9.3.
- 1.52 "Event of Default" is defined in Section 19.
- 1.53 "Excess Charging Energy" is defined in Section 8.11.2(b).
- 1.54 "Expected Annual Output" means the quantity of Energy, determined in a commercially reasonable manner, identified in Exhibit A for each calendar year during the Delivery Period of the Facility. Unless otherwise mutually agreed by the Parties, the Expected Annual Output shall be equal to the annual output of the Facility specified in Seller's proposal bid form submitted in connection with the RFP. If Seller desires to deviate from the proposal bid amount, Seller shall submit a written request to Buyer no later than the bid refresh date specified in the RFP, together with evidence which is satisfactory to Buyer in its reasonable discretion, that the change is warranted and reasonable. If the Parties mutually agree to revise the Expected Annual Output, the Agreement shall be amended to document the change. If Seller fails to request an amendment to the Expected Annual Output on or prior to the bid refresh date, as required hereunder, Seller will be deemed to have waived the right to request an update to the Expected Annual Output as permitted under this Section 1.54.
- 1.55 "Facility" means the Generating Facility and the Storage Facility.
- 1.56 "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.57 "First COD Date" is defined in Section 20.5.
- 1.58 "Fitch" - means Fitch Ratings Ltd. or its successor.
- 1.59 "Force Majeure" is defined in Section 14.1.

- 1.60 "Force Majeure Instruction" means any System Operator Instruction relating to, due to, in response to, or to address a Force Majeure.
- 1.61 "GAAP" is defined in Section 9.1.
- 1.62 "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).
- 1.63 "Generating Facility" means Seller's [describe facility including renewable energy resource used] electric generating facility located in [_____] County, [_____] [State], at _____, as further identified in Exhibit D.
- 1.64 "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.
- 1.65 "Grid Charging Energy" means all energy obtained from the grid to use to charge the Storage Facility as a result of a Charging Notice given by Buyer. All Grid Charging Energy shall be used for Buyer's benefit in accordance with Charging Notices and Discharging Notices given by Buyer.
- 1.66 "Net Grid Charging Energy" means the quantity of Grid Charging Energy obtained at the Delivery Point multiplied by the Storage Round Trip Efficiency.
- 1.67 "Guaranteed Storage Energy Capacity Rating" means [_____]MW for the term of the agreement.
- 1.68 "Guaranteed Storage Availability" is defined in Exhibit L.
- 1.69 "Guaranteed Storage Energy Capacity Rating" is defined in Exhibit E.
- 1.70 "Guaranteed Storage Round Trip Efficiency" is equal to eighty percent (80%) for the Term of the Agreement
- 1.71 "Guarantor" means any Creditworthy Person having the authority and agreeing to guarantee a Party's obligations under this Agreement and is otherwise acceptable to Buyer in its reasonable discretion.
- 1.72 "Guaranty" means a parent company guaranty, in substantially the form set forth in Exhibit F attached hereto, provided by a Guarantor in favor of Buyer guaranteeing the obligations of Seller under this Agreement.

- 1.73 "Independent Evaluator" shall mean Charles River Associates, the party selected by Buyer to evaluate bids submitted under the RFP.
- 1.74 "Initial Liquidated Damages" is defined in Section 20.5.1.
- 1.75 "Interconnection Agreement" means the separate interconnection and transmission service agreement (or agreements) to be negotiated and executed between Seller and the Transmission Provider concerning the interconnection of the Facility with the System, upgrade to the System to accommodate the Facility's interconnection with and operation in parallel with the System, and the requirements for transmission service.
- 1.76 "Interconnection Facilities and System Upgrades In-Service Date" shall be the later of the Requested Upgraded In-Service Date and Requested Facilities In-Service Date as specified in Appendix 4 (Milestones) of the Interconnection Agreement).
- 1.77 "Interconnection Instruction" means any order, action, signal, requirement, demand, and/or direction, howsoever provided or implemented by the System Operator due to, in response to, or to address any condition relating to any service and/or obligation occurring under the Interconnection Agreement.
- 1.78 "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.
- 1.79 "kW" means kilowatt.
- 1.80 "kWh" means kilowatt-hour.
- 1.81 "Lenders" is defined in the definition of Permitted Transfer.
- 1.82 "Letter(s) of Credit" means one or more irrevocable standby letters of credit substantially in the form of Exhibit G attached hereto (with only such changes as the issuing bank may reasonably require and as may be acceptable to Buyer in its reasonable discretion), issued by a U.S. commercial bank or other financial institution reasonably acceptable to Buyer, which is not an Affiliate of Seller, which has and maintains a Credit Rating of at least A- from S&P and A3 from Moody's, for the Security Period, permitting Buyer to draw the entire amount if either such amount is owed or such Letter of Credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date.
- 1.83 "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.
- 1.84 "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).

- 1.85 "Maintenance Outage" means the temporary removal of the Facility from service to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.
- 1.86 "Milestone Deadline" means the deadline for Seller to achieve each Operational Milestone as set forth in Exhibit C.
- 1.87 "Measurement Period" is defined in Section 8.5, provided, however, for purposes of clarity, the first Measurement Period shall commence on January 1st of the Contract Year following the Contract Year in which the Commercial Operation occurred.
- 1.88 "Monthly Capacity Payment" means the Storage Price per kW-year, multiplied by the Storage Energy Capacity Rating, multiplied by the Monthly Capacity Payment Percentage
- 1.89 "Monthly Capacity Payment Percentage" means the percentage equal to: (i) twelve percent (12%), for each of November, December, January, February and March, (ii) seven and three-quarter percent (7.75%), for each of June, July, August, and September, and (iii) three percent (3%), for each of April, May and October.
- 1.90 "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.91 "MW" means megawatt.
- 1.92 "MWh" means megawatt-hour.
- 1.93 "Nameplate Capacity Rating" means the maximum generating capability of the Facility as measured at the Delivery Point (AC) as set forth in Exhibit D.
- 1.94 "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).
- 1.95 "Net Output" means all energy (measured in MWh) produced by the Generating Facility and delivered to Buyer at the Delivery Point, inclusive of Discharging Energy, but excluding all (i) interconnection, electric losses, transmission and other losses incurred by Buyer to dispatch the energy from the Generating Facility or the Storage Facility (as the case may be) to the Delivery Point, (ii) Net Grid Charging Energy, and (iii) Excess Charging Energy.

- 1.96 "New Renewable Energy Facility" is defined in the Act.
- 1.97 "Non-Compensable Curtailment" means those periods when Seller is unable to schedule or deliver energy to the Delivery Point in whole in part as a result of: (i) actions required to be taken to comply with a System Operator Instruction, (ii) Force Majeure, (iii) Buyer Event of Default or any other action or omission of Buyer, (iv) Owner not issuing a Grid Charging Notice or (iv) an Emergency Condition.
- 1.98 "Non-Defaulting Party" is defined in Section 20.
- 1.99 "Off Peak Months" means the months of April, May and October.
- 1.100 "Operational Milestone" means each operational event and result that Seller must achieve as set forth in the Operational Milestone Schedule, with such supporting documentation as may be requested by Buyer from time-to-time in its Commercially Reasonable discretion.
- 1.101 "Operational Milestone Schedule" means the schedule established in Exhibit C setting forth each Operational Milestone that Seller must fully complete by the Milestone Deadline.
- 1.102 "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.103 "Peak Months" means the months of January, February, March, June, July, August, September, November and December.
- 1.104 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit or (except with respect to Performance Assurance required under Section 5.1) a Guaranty that is acceptable to Buyer in its sole discretion, in each case that meets the requirements set forth in this Agreement (including, without limitation, Section 5) provided by Seller to Buyer for the benefit of Buyer pursuant to this Agreement, as credit support, adequate assurances, and security to secure Seller's performance under this Agreement.
- 1.105 "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.
- 1.106 "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 to any of the following occurrences: (a) an Emergency Condition Instruction; (b) a Control Instruction; (c) an Interconnection Instruction; (d) a Non-Compensable Curtailment or, (e) a Force Majeure Instruction.
- 1.107 "Permitted Transfer" means any of the following: any direct or indirect transfer of the membership interests in Seller (A) to any entity providing financing to Seller or its Affiliates and their agents (collectively, the "Lenders") as a result of the foreclosure by the Lenders of the pledged ownership interests in Seller or any of its direct or indirect parent companies; provided that after such transfer to the Lenders, the operator of

the Facility remains the same as prior to the transfer, or the Lenders engage an operator with at least two (2) years of experience in the operation of at least 100 MW of solar energy projects, or (B) by the Lenders (upon or after foreclosure by Lenders as specified in (A) above) to a third party, provided that the third party transferee has, in Buyer's Commercially Reasonable discretion, the technical, engineering, financial, and operational capabilities to perform under this Agreement either directly or by engaging an entity that satisfies such requirements.

- 1.108 "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.
- 1.109 "Planned Outage" means the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility.
- 1.110 "Product" means: (a) (i) the Capacity of, and Energy generated by, the Generating Facility, and (ii) the RECs associated with the Energy generated by the Generating Facility; and (b) the Storage Product.
- 1.111 "Protected Information" is defined in Section 16.1
- 1.112 "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 similar to the Facility, 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.
- 1.113 "PSC" means the Public Service Commission of South Carolina, or successor thereto.
- 1.114 "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as such may be amended from time to time.
- 1.115 "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.
- 1.116 "Qualifying Facility" means an electric generating facility that has been registered and certified by FERC as generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.

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

health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.

- 1.125 "Resource Solicitation Cluster" or "RSC" shall have the meaning ascribed to such term in Section 4.4.2 of the North Carolina Interconnection Procedures and Appendix Duke CS, Section 5.3.2 to the South Carolina Generator Interconnection Procedures, as applicable, for purposes of implementing a Cluster Study for proposals bid into the RFP effective as of [____].
- 1.126 "Second COD Date" is defined in Section 20.5.1.
- 1.127 "Security Period" is defined in Section 5.7.
- 1.128 "Seller" shall have the meaning specified in the first paragraph of this Agreement.
- 1.129 "Smoothing" means use of the Storage Facility's physical attributes to mitigate the fluctuations associated with solar photovoltaic energy.
- 1.130 "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency thereto.
- 1.131 "Station Power" means the Energy generated by the Generating Facility and, whether metered or unmetered, used on-site to supply the Generating Facility's parasitic load and/or for powering the electric generation equipment.
- 1.132 "Storage Availability" is defined in Exhibit L.
- 1.133 "Storage Availability Damages" is defined in Exhibit L.
- 1.134 "Storage Availability Guarantee" is defined in Section 8.11.4.
- 1.135 "Storage Energy Capacity" means the maximum dependable operating capability of the Storage Facility to discharge electric energy in MWh, and any other products or related ancillary services that may be developed or evolve from time to time during the Term that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy.
- 1.136 "Storage Energy Capacity Test" means the testing procedures, requirements and protocols set forth in Exhibit K.
- 1.137 "Storage Facility" means Seller's energy storage facility as further described in Exhibit D, including all equipment, devices, associated appurtenances owned, controlled, operated, or managed by or on behalf of Seller in connection with, or to facilitate the charging and storage of energy produced by the Facility and the discharging, transmission, delivery or furnishing of energy produced by the Facility and discharged from the Storage Facility to Buyer.
- 1.138 "Storage Operating Procedures" means the procedures and protocols governing operations of the Storage Facility which are set forth in Exhibit J, including (a)

minimum and maximum operating parameters, (b) procedures for scheduling and dispatch, and (c) methods of day-to-day communications.

- 1.139 "Storage Energy Capacity Damages" is defined in Exhibit K.
- 1.140 "Storage Energy Capacity Guarantee" is defined in Exhibit K.
- 1.141 "Storage Energy Capacity Rating" means the total capacity (in MW) of the Storage Facility as determined from time to time in accordance with Exhibit K.
- 1.142 "Storage Price" is defined in Section 4.5.1.
- 1.143 "Storage Price Adder" is defined in Section 4.5.2.
- 1.144 "Storage Product" means: (a) Discharging Energy, and (b) Storage Energy Capacity, in each case, arising from or relating to the Storage Facility.
- 1.145 "Storage Ramp Rate" means the rate (measured in MW/minute) at which the Storage Facility can change power output.
- 1.146 "Storage Ramp Rate Guarantee" is defined in Section 8.11.6.
- 1.147 "Storage Ramp Rate Test" means the testing procedures, requirements and protocols set forth in Exhibit N.
- 1.148 "Storage Round Trip Efficiency" means, in respect of the Storage Facility and a specified period, the ratio (expressed as a percentage) of (a) the total amount of energy (in MWh and measured at the Delivery Point) discharged from the Storage Facility during such period of time and (b) the total amount of energy (in MWh and measured at the Delivery Point) charged to the Storage Facility during such period of time, all as determined pursuant to Exhibit M.
- 1.149 "Storage Round Trip Efficiency Guarantee" is defined in Section 8.11.5.
- 1.150 "Storage Round Trip Efficiency Test" means the testing procedures, requirements and protocols set forth in Exhibit M.
- 1.151 "Stored Energy Level" means, at a particular time, the amount of electric energy stored in the Storage Facility, expressed in MWh.
- 1.152 "System" means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, or operated by Buyer and/or the Transmission Provider, including, without limitation, facilities to provide retail or wholesale service, substations, circuits, reinforcements, meters, extensions, or equipment associated with or connected to any interconnected facility or customer.
- 1.153 "System Operator" means the operators of the System that have the responsibilities for ensuring that the System as a whole or any part thereof operates safely, efficiently, and reliably, including without limitation the responsibilities to comply with any applicable operational or reliability requirements, the responsibilities to balance generation supply with customer load, the responsibilities to comply with any other regulatory obligation including least cost dispatch and System optimization, and the

responsibilities to provide dispatch and curtailment instructions to generators supplying Energy to the System. The System Operator includes any person or entity delivering any such instructions or signals to Seller or taking any action relating to, due to, in response to, or to address such instructions.

- 1.154 "System Operator Instruction" for purposes of this Agreement means any order, action, signal, requirement, demand, dispatch decision, and/or direction, howsoever provided or implemented by the System Operator to operate, dispatch, control, manage, or otherwise operate the System in accordance with any applicable obligation and/or regulatory requirement, including, without limitation, those undertaken and implemented by the System Operator, in its sole discretion based on relevant System factors and dispatch considerations, including any and all operating characteristics, maintenance requirements, operational limitations, operational or dispatch planning, reliability (including standing NERC regulations or standards), safety, least cost dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other System considerations, which may include, without limitation, any such instruction to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the System, (ii) increase, reduce, or cease generation output to comply with standing NERC regulations or standards or any other regulatory obligation applicable to the dispatch or operation of the System; (iii) respond to any transmission, distribution, or delivery limitations or interruptions; (iv) perform or cease performing any activity so as to operate in accordance with System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability generators to accommodate generation by the Facility; and, (v) suspend, interrupt, dispatch, increase or decrease any operational and/or generation activity occurring on or into the System pursuant to Control Instructions, Emergency Condition Instructions, and Force Majeure Instructions.
- 1.155 For purposes of this Agreement, a System Operator Instruction shall not include any Interconnection Instruction.
- 1.156 "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.157 "Term" is defined in Section 3.1.
- 1.158 "Testing Period" is defined in Section 4.4.
- 1.159 "Tracking System" means the verification system that accounts for the generation, sale, purchase, and/or retirement of renewable energy and credits, which will be the North Carolina Renewable Energy Tracking System, administered by the Commission pursuant to the Act.
- 1.160 "Transmission Provider" means the entity or division within *[Duke Energy Carolinas, LLC]* *[Duke Energy Progress, LLC]* that will provide interconnection and/or electric distribution or transmission service to enable delivery of Energy generated by the Facility to Buyer, and any such entity or division will include any successor or

replacement thereto, including without limitation, a consolidated control area or a regional transmission organization.

- 1.161 "Vintage" means the calendar year when the MWh of Energy is generated by the Facility, and therefore, when the REC associated with that MWh of Energy is generated by the Facility.

2. **Interpretation**

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

3. **Term and Termination**

- 3.1 **Term.** This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until the fifteenth] (15th) anniversary of the Commercial Operation Date ("Term"), unless terminated earlier pursuant to the provisions of this Agreement.
- 3.2 **Termination and Survival.** This Agreement may be terminated earlier than the expiration of the Term as provided for herein. If this Agreement is terminated earlier than the expiration of the Term for any reason, including, without limitation, whether by its terms, mutual agreement, early termination, and/or event of default, such termination shall not relieve any Party of any obligation accrued or accruing prior to the effectiveness of such termination. Furthermore, any obligations, limitations, exclusions and duties which by their nature or the express terms of this Agreement

extend beyond the expiration or termination of this Agreement, including, without limitation, provisions relating to compliance requirements, accounting, billing, billing adjustments, limitations or liabilities, dispute resolution, Performance Assurance, and any other provisions necessary to interpret or enforce the respective rights and obligations of the Parties hereunder, shall survive the expiration or early termination of this Agreement.

- 3.3 **[FOR FACILITIES LOCATED IN SOUTH CAROLINA ONLY]** Condition Precedent for Buyer. It is a condition to the continuing obligations of each Party under this Agreement that the Public Service Commission of South Carolina (the "PSC") shall have accepted this Agreement for filing with the PSC without any modification (unless such modification is acceptable to all the Parties), condition, suspension, or investigation. No later than ten (10) Business Days after both Parties have executed this Agreement, Buyer will submit the Agreement for filing with the PSC. Seller agrees that Buyer will have sole discretion over all aspects of such submittal, including without limitation, the form and substance of the submittal, confidentiality, procedure, responding to any data requests, and providing any information to the PSC and the South Carolina Office of Regulatory Staff. Seller will not oppose or challenge the PSC's acceptance of this Agreement, and upon request by Buyer will promptly and fully support the PSC's acceptance of this Agreement without any modification, condition, suspension, or investigation. Buyer will make a good faith request that the PSC and the South Carolina Office of Regulatory Staff keep confidential the terms and conditions of this Agreement; *provided, however*, Seller agrees and acknowledges that information (including Protected Information) contained in this Agreement may become public by its submission to the PSC and the South Carolina Office of Regulatory Staff, and Seller hereby consents to any such disclosure, without any reservations and without any prior notice to Seller. If the PSC issues an order or any other directive to modify, condition, suspend, or investigate any aspect of this Agreement prior to its acceptance that is not acceptable to all Parties, , then this Agreement will immediately terminate, and upon any such termination neither Party shall have any obligation, duty, or liability to the other Party under this Agreement. In the event of such termination, each Party will retain its respective rights under PURPA. Buyer will provide notice to Seller after Buyer has received written notice of the PSC's determination in regard to Buyer's request that the PSC accept the Agreement for filing, and if such written notice from the PSC accepts this Agreement without any modification, condition, suspension, or investigation then Buyer will notify Seller that the condition precedent under this Section 3.3 has been satisfied.

4. **Purchase and Sale Obligations**

- 4.1 Delivery Period. The "Delivery Period" for the Product being sold by Seller and purchased by 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.
- 4.2 Vintage. The RECs shall be of the same Vintage as the MWh of Energy generated by the Facility, and the RECs shall arise due to the generation of Energy by the Facility.
- 4.3 Contract Quantity. The "Contract Quantity" will be one hundred percent (100%) of the Product produced by the Facility, less the Station Power.

- 4.3.1 Seller shall sell and deliver the Contract Quantity of the Product exclusively and solely to Buyer. Seller's failure to generate, sell, and deliver the Contract Quantity of the Product to Buyer will be excused with no damages payable to Buyer solely to the extent such failure is due to a Permitted Excuse to Perform.
- 4.3.2 Except as set forth in Section 8.9.1, Buyer shall have no obligation to receive, purchase, pay for, or pay any damages associated with not receiving the Product due to a Permitted Excuse to Perform. Buyer shall have full and exclusive rights to the Product (inclusive of all components), and will be entitled to full and exclusive use of the Product (inclusive of all components) for its purposes and in its sole and exclusive discretion.
- 4.3.3 The estimated monthly and annual Energy production of the Facility during the Delivery Period is set forth in Exhibit A hereto.
- 4.4 Testing Period. Prior to the Facility's Commercial Operation Date, Seller may test the capability of the Facility to operate and generate the Product in accordance with this Agreement (such operational period, the "Testing Period"). Seller shall provide Buyer with written notice of a date certain on which Seller desires to initiate the Testing Period, to be agreed upon by the System Operator. After the Facility has achieved the Commercial Operation Date, the Buyer shall, expressly subject to the limitations set forth below, purchase the Product produced by the Facility during the Testing Period at the Contract Price, but expressly subject to the Buyer fully satisfying the following conditions: (i) the Testing Period will be limited to sixty (60) days, but shall be extended day-to-day for any delays in completing testing and issuing the final permit to operate caused by the Buyer and which is not the result of Seller's acts or omissions; and; (ii) the RECs shall meet all of the requirements set forth in this Agreement; and, (iii) Seller shall certify in writing to Buyer, and to Buyer's satisfaction, together with supporting details, that each unit of the Product (including the associated REC) to be sold and purchased during the Testing Period was generated in compliance with the requirements of this Agreement. To the extent Seller is unable to satisfy the foregoing requirements; the Buyer shall purchase the Energy generated by the Facility at the Contract Rate.
- 4.5 Contract Price; Storage Price.
- 4.5.1 Contract Price and Storage Price. The price for (i) the energy delivered to the Delivery Point shall be [\$_____] (the "Contract Price"), and (ii) storage shall be [\$_____] (the "Storage Price").
- 4.5.2 Storage Price AdderAdjustment. As contemplated under the RFP, ~~if the Buyer elects to have the Seller fund the system upgrade costs associated with the Facility under the Interconnection Agreement, then~~ the Storage Price will be adjusted ~~to include the storage price adder~~ pursuant to the applicable price adjustment formula(s) specified in Exhibit B (individually and collectively, the "Storage Price AdderAdjustment"), which shall be memorialized in writing signed by the Buyer and Seller. The Storage Price may be adjusted to account for the following charges, as may be applicable: (i) actual system upgrade costs (as established in the interconnection Final Accounting Report), and (ii) an amount, determined by Buyer in a commercially reasonable manner, to

compensate Seller for upgrade carrying costs resulting from the estimated in-service date being beyond [11/30/2030], and which were not caused by Seller, its Affiliates or contractors. In order to effectuate ~~the~~ Storage Price ~~Adder~~Adjustment, Seller shall provide written notice to Buyer together with a copy of the ~~executed—Interconnection—Agreement~~interconnection Final Accounting Report documenting ~~that the system upgrades costs are being charged to Seller~~applicability of the Storage Price Adjustment, as soon as reasonably possible after the ~~execution of the Interconnection Agreement~~Final Accounting Report has been tendered. The Storage Price ~~Adder~~ shall not be ~~added to the Storage Price~~modified or changed unless and until the Parties memorialize the adjusted Storage Price in ~~writing~~a written amendment in accordance with the terms of this Section 4.5.2.¹

- 4.6 Energy Delivery. Seller shall deliver the Contract Quantity of the Energy component of Product at the Delivery Point, and Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Energy to the Delivery Point. Except as set forth in Section 8.9.1, Buyer will have no obligation to pay for any Energy not delivered to the Delivery Point.
- 4.7 Charging Energy and Grid Charging Energy Delivery.
- 4.7.1 Seller shall deliver the Contract Quantity of the Charging Energy to the Storage Facility in accordance with a Charging Notice provided hereunder and shall provide Buyer with the Contract Quantity of Discharging Energy. Seller shall be fully responsible for all costs, losses, charges, expenses, and other requirements associated with delivering the Charging Energy to the Storage Facility.
- 4.7.2 The value of the Grid Charging Energy procured pursuant to a Charging Notice, including associated demand charges due to Charging Energy, if any, shall be credited by Buyer to Seller.
- 4.8 REC Delivery. Seller shall deliver to Buyer's Account the Contract Quantity of the REC component of the Product in the form of Certificates. Seller agrees that in addition to representing the attributes and characteristics under the Tracking System's operating rules and requirements, the Certificate will also represent the REC, Renewable Energy Attributes, and REA Reporting Rights as defined in this Agreement. No later than fourteen (14) calendar days after the meter data is delivered to Seller's Account, Seller shall review the meter data and complete all acts necessary to create the Certificates in the Tracking System and shall transfer the Certificates into Buyer's Account. Each Party shall establish an Account with the Tracking System for the creation, transfer, and/or receipt of the Certificates. Seller agrees to establish the Account for the Facility no later than fifteen (15) Business Days prior to the Commercial Operation Date.

¹ **NTD**: Only one PPA will be signed for each Solar Paired with Storage project.

4.9 Payment for Product.

4.9.1 Product Delivered to Buyer. Throughout the Term, Buyer shall pay to Seller each Month in accordance with Section 11:

a. For any Month or any portion of a Month after the Commercial Operation Date, for each MWh of Product delivered to the Delivery Point during such Month in accordance with the terms herein, an amount equal to:

4.9.1.a.1. the product of (i) the Contract Price per MWh, and (ii) the total Net Output of the Facility delivered to the Delivery Point;

4.9.1.a.2. the product of (i) the Storage Price per kW-year, (ii) the Storage Energy Capacity Rating, and (iii) the Monthly Capacity Payment Percentage; and

4.9.1.a.3. to the extent applicable, the Control Compensation for such Month.

b. Seller agrees that to the extent Buyer has already paid for the Product prior to Seller transferring the REC component of the Product in the manner noted above, Buyer shall have ownership of the REC component of the Product, and Seller shall hold the same in trust for Buyer until the transfer is completed as provided for herein. Buyer shall not be obligated to pay for any RECs for which the Certificates are not delivered to Buyer's Account.

4.10 Transfer. In no event shall Seller procure or have the right to procure the Product or any component of the Product from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Product sold and delivered hereunder shall transfer from Seller to Buyer, with respect to Capacity and Energy after completion of delivery at the Delivery Point and, with respect to RECs, after completion of transfer of the REC component of the Product to Buyer. Seller shall be responsible for any costs and charges imposed on or associated with the Product and the delivery of the Product at the Delivery Point and upon completion of transfer of the REC component. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point and after completion of transfer of the REC.

5. Credit and Related Provisions.

5.1 Pre-COD Performance Assurance Requirements. Subject to Section 5.3 below, no later than five (5) business days after the Effective Date, Seller shall provide and deliver to Buyer Performance Assurance in the form of cash or a Letter of Credit in the amount of *[4% x total projected revenue under the Agreement during the Term as determined by Buyer in its reasonable discretion – amount to be populated prior to execution. The total projected revenue shall be calculated based on the Part C portion and the fixed price energy rate of the RFP Bid and shall not include any Contract Price adders for network upgrades specified in Part D of the RFP Bid.]*, as such Performance Assurance

may be adjusted pursuant to Section 20.5.1. For purposes of clarity, Seller shall not be permitted to provide a Guaranty as Performance Assurance for purposes of satisfying Seller's obligations under this Section 5.1.

- 5.2 Post-COD Performance Assurance. Subject to Section 5.3 below, after the Facility achieves Commercial Operation, Seller shall provide Buyer with Performance Assurance in the amount set forth in the below table corresponding to the applicable period during the Term of this Agreement. Seller may request and Buyer may, subject to Section 5.2, adjust the amount of such Performance Assurance within fifteen (15) Business Days of Seller's written request to coincide with the amount set forth in the below table. Seller's failure to provide the Performance Assurance and/or to maintain the Performance Assurance in the required amount and in full force and effect throughout the Term of this Agreement will be an Event of Default under this Agreement.

[Insert TABLE – Annual Performance Assurance - Post COD Performance Assurance shall be calculated by Buyer in a Commercially Reasonable Manner and shall equal 2% x total projected revenue under the Agreement during the Term. Table to be inserted prior to execution. *The total projected revenue shall be calculated based on the Part C portion of the RFP Bid and shall not include any Contract Price adders for network upgrades specified in Part D of the RFP Bid.*]

- 5.3 Unsecured Credit for Creditworthy Sellers. If Seller is Creditworthy and is not in default of any provisions under this Agreement the Seller shall be excused from the requirement to post Performance Assurance as required under Sections 5.1 and 5.2 above, as long as it remains Creditworthy. If at any time during the Term of this Agreement, Seller, or its Guarantor (if applicable), ceases to be Creditworthy due to a change in its Credit Rating, then Seller will notify Buyer of such change in its credit status and shall provide (or replace) Performance Assurance to Buyer in the amounts required under Section 5.1 or 5.2, as applicable, within five (5) Business Days after such change in its Credit Rating.
- 5.4 Financial Disclosures. If requested by Buyer, Seller shall timely provide to Buyer financial information of Seller as follows: (i) a copy of Seller's most recent quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Seller attesting to their accuracy; and, (ii) within 120 days after the end of each fiscal year that this Agreement is effective a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year. If Seller does not have audited financial statements, Seller shall deliver to Buyer financial statements in a form reasonably acceptable to Buyer and certified by a financial officer of Seller. All financial statements required hereunder shall be prepared in accordance with generally accepted accounting principles or other procedures with which Seller is required to comply with under applicable law. If information required under this Section 5.4 is available on a publicly available web site, then the delivery requirement shall be deemed to be satisfied.
- 5.5 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 may be netted, offset, set off, or recouped therefrom, and payment shall be

owed as set forth above. Unless Buyer notifies Seller in writing (except in connection with a liquidation and termination) all amounts netted pursuant to this section shall not take into account or include any credit support, which may be in effect to secure a Party's performance under this Agreement. The netting set forth above, shall be without prejudice and in addition to any and all rights, liens, setoffs, recoupments, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement.

- 5.6 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 (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 (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.
- 5.7 Performance Assurance Requirements. Seller shall ensure that the Performance Assurance in the required amount remains in full force, and effect, and outstanding for the duration required by this Agreement. All applicable Performance Assurance, in the amount required pursuant to the terms of this Agreement, shall remain in full force, and effect, and outstanding for the benefit of Buyer until sixty (60) days following the later of: (a) the end of the Term or (b) the date on which Seller has fully satisfied all obligations to Buyer under this Agreement (the "Security Period"). If at any time any Performance Assurance fails to meet any of the requirements under this Agreement, Seller shall replace such Performance Assurance with alternative Performance Assurance that meets each of the requirements under this Agreement. Seller will be solely responsible for any and all costs incurred with providing and maintaining any Performance Assurance to the full amount required by this Agreement. If Seller fails to replace, renew, or otherwise maintain the required Performance Assurance as and when required by this Agreement, then Buyer: (a) shall be entitled to draw and retain hereunder the full amount of the Performance Assurance; (b) shall not be obligated to make any further payments to Seller until Seller shall have provided Buyer with the replacement Performance Assurance; and, (c) shall be entitled to give Seller notice of an Event of Default and pursue the termination rights and remedies provided for in this Agreement.
- 5.8 Grant of Security Interest. To secure its obligations and liabilities under this Agreement to Buyer, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of netting and set-off against), and assignment of, all present and future Performance Assurance, including, without limitation, cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer; and, furthermore Seller agrees to take such

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

6. **Seller Compliance Requirements.**

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

6.1.1 Commission approval and certification that the Facility is registered and certified as a New Renewable Energy Facility in compliance with the Act.

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

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

6.2 **Seller Covenants.** Seller covenants to Buyer that it shall comply with all of the requirements of the Act and other Requirements of Law applicable to Seller, the Facility, and/or Seller's obligations under the Agreement. Without limiting the generality of the foregoing Seller represents and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that: (a) [prior to commencement of construction of the Facility Seller shall have obtained an approved and valid report of proposed construction or certificate of public convenience and necessity for the Facility from the [Commission] [if not required, delete and renumber accordingly]; (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 required approvals and certifications that the Facility is a Qualifying Facility from FERC. Seller agrees and acknowledges that Buyer has entered into this Agreement in reliance upon the representations and warranties set forth in this section, and in the event of a breach or failure of or relating to any of the foregoing covenants and warranties, including without limitation for being false or misleading in any respect, then this Agreement will terminate upon Buyer providing Seller with thirty (30) day's written notice unless such breach or failure has been

cured before the end of such thirty (30) day period. Subject to Section 22.2, Seller will indemnify and hold Buyer harmless for any breach or failure relating to any of the foregoing covenants and warranties, notwithstanding anything else to the contrary in this Agreement.

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

7. **Seller's Facility Requirements.**

- 7.1 Seller Requirements. Seller covenants (except to the extent expressly set forth in this Agreement) that: the Facility shall be designed, constructed, operated, controlled, maintained, and tested at Seller's sole cost and expense; the Facility shall be designed, constructed, operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, maintained, and tested by Seller to perform as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with the requirements of each applicable Requirements of Law and Prudent Utility Practice; and, that all contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the construction, ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, grading and building permits, and contracts and/or licenses to obtain the underlying fuel, install and operate the Facility, and deliver and sell the Product of the Facility) shall be timely obtained and maintained by Seller, at Seller's sole cost and expense. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility. Seller shall construct, interconnect, operate, and maintain the Facility in accordance with Prudent Utility Practice. Seller shall be responsible for all costs, charges, and expenses associated with generating, scheduling, and delivering the Energy to Buyer.

- 7.1.1 Notice Requirement. For each Operational Milestone, Seller shall deliver written notice to Buyer within five (5) Business Days of Seller having met such Operational Milestone. If Seller will be unable to timely meet any Operational Milestone, Seller shall also deliver written notice to Buyer informing Buyer that Seller will be unable to meet an Operational Milestone, but in any event Seller shall deliver notice to Buyer no later than five (5) Business Day after the due date of the Operational Milestone that Seller failed to achieve. Buyer shall have no obligation or liability to Seller for Buyer failing to advise Seller of any condition, damages, circumstances, infraction, fact, act, omission or disclosure

discovered or not discovered by Buyer with respect to any Operational Milestone, the Facility, the System or any contractor.

- 7.2 **Seller Responsibilities.** Notwithstanding any provision of this Agreement to the contrary, the Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the design, development, construction, maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Governmental Authority on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances *inter alia* for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller.
- 7.2.1 **No Exclusions.** If any production or investment tax credit, grants, subsidy, or any other similar incentives or benefit relating, directly or indirectly, to the Facility is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; and, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.
- 7.3 **Transmission Provider.** Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement (or agreements) between Seller and Transmission Provider, and will exclusively govern all requirements and obligations between Seller and Transmission Provider. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible for under the Interconnection Agreement. Seller shall comply with all Interconnection Instructions.
- 7.3.1 Nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligation, and liabilities under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider, and the terms of this Agreement are not (and will not) be binding upon the Transmission Provider. Seller agrees and acknowledges that Seller's performance under this Agreement depends on Seller's performance under the Interconnection Agreement, and Seller hereby grants Buyer the right and entitlement to obtain information from the Transmission Provider in regard 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 Buyer and the System, and Seller agrees to fully comply with all System Operator Instructions.
- 7.5 Insurance Obligations. Commencing with the initiation of construction activities of the Facility and continuing until the termination of this Agreement, and at no additional cost to Buyer, Seller shall maintain or cause to be maintained by contracted parties at the Facility, occurrence form insurance policies as follows: (a) Workers' Compensation in accordance with the statutory requirements of the state in which the Services are performed and Employer's Liability Insurance of not less than \$500,000 each accident/employee/disease; (b) Commercial General Liability Insurance having a limit of at least \$1,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and damage to property, premises and operations liability and explosion, collapse, and underground hazard coverage; (c) Commercial/Business Automobile Liability Insurance (including owned (if any), non-owned or hired autos) having a limit of at least \$1,000,000 each accident for bodily injury, death, property damage and contractual liability; (d) Property Damage insurance on the Facility written on an all risk of loss basis; and, (e) if Seller will be handling or the Facility will have present environmentally regulated or hazardous materials, Pollution Legal Liability, including coverage for sudden/accidental occurrences for bodily injury, property damage, environmental damage, cleanup costs and defense with a minimum of \$1,000,000 per occurrence (claims-made form acceptable with reporting requirements of at least one (1) year). All insurance policies provided and maintained by Seller or applicable party shall: (i) be underwritten by insurers which are rated A.M. Best "A- VII" or higher; (ii) specifically include Buyer as additional insured's, excluding, however, for Worker's Compensation/Employer's Liability and Property Damage insurance; (iii) be endorsed to provide, where permitted by law, waiver of any rights of subrogation against Buyer; and (iv) provide that such policies and additional insured provisions are primary and without right of contribution from any other insurance, self-insurance or coverage available to Buyer. Any deductibles or retentions shall be the sole responsibility of Seller or the applicable party. Seller's compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of Seller's liability pursuant to this Agreement. Any failure to comply with and these provisions shall not be deemed a waiver of any rights of Buyer under this Agreement or with respect to any insurance coverage required hereunder. Buyer at its sole discretion may request Seller to provide a copy of any or all of its required insurance policies, including endorsements in which Buyer is included as an additional insured for any claims filed relative to the Facility or this Agreement.

8. **Facility Performance and Operating Requirements.**

- 8.1 Planned Outages. No later than fifteen (15) Business Days prior to the end of each year during the Term, Seller shall provide to Buyer a Planned Outage schedule for the upcoming year. Seller shall provide Buyer with reasonable advance notice of any material change in the Planned Outage schedule. Seller shall determine the number and extent of Planned Outages in a Commercially Reasonable Manner recognizing that it is the intent of the Parties to maximize production of the Facility and to such extent Seller shall be excused from providing the Product during such Planned Outage(s).

Unless both Parties expressly agree otherwise, any Planned Outage shall only occur during the months of April, May, or October, provided however, that Buyer shall not unreasonably withhold its consent to any Planned Outage reasonably requested by Seller that cannot reasonably be completed within the months of April, May or October.

- 8.2 Maintenance Outages. If Seller needs or desires to schedule a Maintenance Outage of all or a portion of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available during such Maintenance Outage, and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.
- 8.3 Notice. Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.
- 8.4 Performance. Seller shall act in a Commercially Reasonable Manner to maximize the output of the Facility in a safe manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product, in each case consistent with Prudent Utility Practice.
- 8.5 Generating Facility Production Requirement. Starting the first full Contract Year after the Commercial Operation Date of the Facility, for each Contract Year during the Delivery Period, the Generating Facility shall produce, as measured on the ~~[AC side of the Generating Facility Inverter²][AC side of the Inverter less any energy throughput from the co-located Storage Devices as measured by the DC to DC Converter and compensated for losses³]~~, not less than eighty five percent (85%) of the Expected Annual Output (the "Production Requirement") measured over each period of two consecutive Contract Years during the Delivery Period (the "Measurement Period"). Where a Permitted Excuse to Perform adversely affects actual generation output of the Facility, the Production Requirement shall be reduced by the amount of Energy not generated due to the Permitted Excuse to Perform; provided, however, that Seller

²-NTD—use for AC-coupled Facilities.

³-NTD—use for DC-coupled Facilities.

agrees that it must demonstrate to Buyer, in Buyer's Commercially Reasonable discretion, that the Facility's generation output was reduced due to a Permitted Excuse to Perform. Buyer's sole remedy for Seller's failure to satisfy the Production Requirement during any Measurement Period shall be to receive a credit against the Contract Price for each month during the immediately following full Contract Year. The foregoing monthly credit to Buyer shall be determined by (a) multiplying (i) the difference between the Production Requirement and the actual Energy (expressed in MWh) delivered by Seller and received by Buyer during the applicable period by (ii) 40% of the average Contract Price for Energy delivered to Buyer in the previous 12 months, and (b) then dividing the amount calculated by (a) above by twelve (12).

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

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

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

- 8.8 Control Instructions. The System Operator shall be entitled to and is hereby authorized to require the Facility to take, or to directly take, all actions to dispatch or otherwise control the generation output and operations of the Facility for any Control Instruction. Except to the extent expressly set forth in Section 8.9, Seller shall not receive any compensation for any losses due to a Dispatch Down. Except as set forth in Section 8.9, all Seller losses for a Dispatch Down shall be borne solely and entirely by Seller, including, without limitation, for any losses arising due to the lost or reduced generation by the Facility, lost tax benefits, lost investment tax credits,

grants or any other incentives or monetary opportunity relating to the design, development, generation from, construction, maintenance, ownership, or operation of the Facility.

8.9 Compensation for Control Instruction Dispatch Down.

8.9.1 Control Compensation. Except as set forth in Section 8.10, Seller shall receive compensation from Buyer for the Dispatch Down of Energy that the Generating Facility would have generated but did not generate due to compliance with and implementation of Control Instructions. Buyer shall calculate such amount payable to Seller by multiplying the Contract Price times the amount of Energy that could have been generated but was not generated due to compliance with and implementation of the Control Instruction ("Control Compensation"). The Control Compensation shall be determined using the Estimation Methodology set forth in Section 8.9.3. The Control Compensation shall be included in the invoice for the month of March commencing with the Contract Year immediately following the first completed Contract Year and in each subsequent March invoice thereafter concluding with the calendar year immediately following the last completed Contract Year during the Term.

8.9.2 Limitations on Control Compensation. Buyer shall pay Seller a Control Compensation for the Dispatch Down of Energy if, and only if: (i) the Generating Facility was generating or would have been generating (absent the Control Instruction) Energy at the time of the Control Instruction and meteorological and Generating Facility operating conditions were such that the Generating Facility would have actually reduced produced Energy at the time of the Dispatch Down instruction; and (ii) the Dispatch Down was due to a System Operator Instruction that was a Control Instruction, but not due to an Emergency Condition Instruction, Force Majeure Instruction, or Interconnection Instruction. The Control Compensation shall be Seller's sole and exclusive payment and remedy for compliance with the Control Instructions, and any and all other Seller losses or payments are expressly disclaimed and waived.

8.9.3 Estimation Methodology. Buyer shall determine in a Commercially Reasonable Manner the quantity of energy delivered to the Delivery Point, in addition to the current active power being exchanged with the Buyer, that is available to be generated from the primary resource based on: (i) The current Generating Facility configuration, which Seller shall provide to Buyer, on a real time basis, during the Term of this Agreement; (ii) the actual local fuel availability conditions (e.g., solar exposure, irradiance, meteorological circumstances); (iii) the Generating Facility design, performance capability, and historic performance (the "Estimation Methodology"). Seller shall be responsible for installing and maintaining all equipment necessary to provide Buyer with the power plant controller output data points specified in Exhibit I on a real-time basis. If the real time data specified in 8.9.3(i) is unavailable, historical production data required under Section 9.4.5 shall be used in its place. Absent manifest error, Buyer's calculations of the quantity of Energy that could not be generated due to compliance with and implementation of the

Dispatch Down instruction(s) shall govern for purposes of determining Control Compensation.

8.9.4 Liquidated Damages for Failure to Comply with Control Instruction. Notwithstanding any provision to the contrary and in addition to the other remedies under this Agreement, In the event that Seller fails to comply with any Control Instruction issued by the System Operator, including as a result of the disabling or inoperability of any Control Equipment, then Seller shall owe liquidated damages in the amount of [\$100 per MW of installed capacity of the Facility per day for any energy delivered to Buyer in violation of the control Instruction].

8.10 Emergency Condition and Force Majeure Instructions. Notwithstanding anything to the contrary set forth herein, the System Operator may provide or implement, and the System Operator shall be entitled to and is hereby authorized to require the Facility to take or to directly take all actions to dispatch or otherwise control the generation output and operations of the Facility for Emergency Condition Instructions and Force Majeure Instructions Seller shall not receive any compensation for any losses due to a Dispatch Down for Emergency Condition Instructions or Force Majeure Instructions. All Seller losses for a Dispatch Down for Emergency Condition Instructions and Force Majeure Instructions shall be borne solely and entirely by Seller, including, without limitation, for any losses arising due to the lost or reduced generation by the Facility, production tax benefits, investment tax credits, grants or any other incentives or monetary opportunity relating to the design, development, construction, maintenance, ownership, or operation of the Facility.

8.11 Storage Facility Charging, Discharging and Testing.

8.11.1 Operation and Maintenance of the Storage Facility. In addition to, and not in limitation of its other obligations under this Agreement to operate and maintain the Facility, during the Term, Seller shall operate, maintain and repair the Storage Facility to be capable to charge or discharge the Storage Facility in accordance with Buyer's instruction pursuant to Section 8.11.2, including maintaining, repairing and replacing equipment in Seller's possession or control used to deliver Charging Energy to the Storage Facility, to charge the Storage Facility, and to deliver Discharging Energy from the Storage Facility to the Delivery Point.

8.11.2 Charging and Discharging Storage Facility.

- a. During the Term, Buyer shall have the exclusive right to schedule or designate the Storage Facility to deliver the Storage Product to Buyer and/or accept Charging Energy or Grid Charging Energy, in accordance with the Storage Operating Procedures and the requirements of this Agreement. Subject to the requirements and limitations set forth in this Agreement, including the Storage Operating Procedures, Buyer will have the exclusive right to charge and discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) for up to 2 cycles per day and not to exceed 365 Cycles per calendar year (or 366 Cycles for any leap year), by providing Charging Notices and Discharging Notices to Seller

electronically. Each Charging Notice will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice, and each Discharging Notice will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice. Seller shall charge and discharge the Storage Facility in strict compliance with Buyer's Charging Notices and Discharging Notices.

- b. Seller shall not charge or discharge the Storage Facility during the Term other than pursuant to a Charging Notice, a Discharging Notice, the Storage Operating Procedures, or in connection with a Storage Facility test conducted in accordance with the requirements of this Agreement. If during the Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or Storage Operating Procedures, (ii) charges the Storage Facility with Grid Charging Energy without express direction from Seller through a Charging Notice to undertake such activity, or (iii) except as permitted under the Storage Operating Procedures, charges the Storage Facility without Buyer providing a Charging Notice ("Excess Charging Energy"), then, in each case: (A) Seller shall be responsible for all costs and expenses associated with such Grid Charging Energy or Excess Charging Energy, as the case may be; (B) Buyer shall not be required to pay for such Excess Charging Energy or reimburse or credit Seller for such Grid Charging Energy; and (C) Buyer shall be entitled to discharge such Excess Charging Energy or Grid Charging Energy and to all of the benefits (including Storage Product) associated with discharging such Excess Charging Energy or Grid Charging Energy, as the case may be.

8.11.3 Storage Energy Capacity Guarantee. If Seller fails to satisfy the Storage Energy Capacity Guarantee in accordance with the requirements set forth in Exhibit K, then Seller shall be liable to Buyer for the Storage Energy Capacity Damages calculated and paid in accordance with Exhibit K. Except in the case of an Event of Default pursuant to Section 19.28, Storage Energy Capacity Damages and any reduction in the payment to Seller pursuant to Section 4.9.1.a.2 (based on the Storage Energy Capacity Rating being less than the Guaranteed Storage Energy Capacity Rating), shall be Buyer's sole remedy for Seller's failure to satisfy the Storage Energy Capacity Guarantee in accordance with the requirements set forth in Exhibit K.

8.11.4 Storage Availability Guarantee. During the Term, except as set forth below, the Storage Facility shall maintain a Storage Availability during each Contract Year of no less than ninety-seven percent (97%) for Peak Months and ninety-four percent (94%) for Off Peak Months. During the first Contract Year, the Storage Facility shall maintain a Storage Availability and ninety-four percent (94%) for both Peak Months and Off Peak Months. If Seller fails to satisfy the Storage Availability Guarantee in accordance with the requirements set forth in Exhibit L, then Seller shall be liable to Buyer for the Storage Availability Damages calculated and paid in accordance with Exhibit L. Except in the case of an Event of Default pursuant to Section 19.29, Storage Availability Damages shall be Buyer's sole remedy for Seller's failure to satisfy

the Storage Availability Guarantee in accordance with the requirements set forth in Exhibit L.

8.11.5 Storage Round Trip Efficiency. During the Term, the Storage Facility shall maintain a Storage Round Trip Efficiency during each Contract Year of no less than the Guaranteed Storage Round Trip Efficiency (the "Storage Round Trip Efficiency Guarantee"). If Seller fails to satisfy the Storage Round Trip Efficiency Guarantee in accordance with the requirements set forth in Exhibit M, then Seller shall be obligated to take such corrective actions as contemplated in Exhibit M.

8.11.6 Storage Ramp Rate. During the Term, the Storage Facility shall maintain a Storage Ramp Rate during each Contract Year of no less than the Storage Ramp Rate specified in Exhibit N (the "Storage Ramp Rate Guarantee"). If Seller fails to satisfy the Storage Ramp Rate Guarantee in accordance with the requirements set forth in Exhibit N, then Seller shall be obligated to take such corrective actions as are contemplated in Exhibit N.

9. **Information Requirements.**

9.1 Accounting Information. Generally Accepted Accounting Principles ("GAAP") and SEC rules can require Buyer to evaluate various aspects of its economic relationship with Seller, e.g., whether Buyer must consolidate Seller's financial information. To evaluate if certain GAAP requirements are applicable, Buyer may need access to Seller's financial records and personnel in a timely manner. In the event that Buyer determines that consolidation or other incorporation of Seller's financial information is necessary under GAAP, Buyer shall require the following for each calendar quarter during the term of this Agreement, within 90 days after quarter end: (a) complete financial statements, including notes, for such quarter on a GAAP basis; and (b) financial schedules underlying the financial statements. Seller shall grant Buyer access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with GAAP standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer pursuant to this section shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed, as required by GAAP, on an aggregate basis with other similar entities for which Buyer has power purchase agreements.

9.2 Facility Information. As of Effective Date and continuing for a period of three months after the Commercial Operation Date, Seller shall promptly provide to Buyer reports relating to the progress of the Facility's development and construction, financing, interconnection activities and performance under the Interconnection Agreement, testing, Seller's good faith estimate of the date for occurrence of the Commercial Operation Date, operational activities, and other information that Buyer may request in its Commercially Reasonable discretion to inform Buyer of Seller's performance under this Agreement. Within ten (10) days after the end of each calendar month until the Commercial Operation Date is achieved, Seller shall prepare and submit to Buyer a written status report which shall cover the previous calendar month, shall be prepared in a manner and format (hard copy or electronic) reasonably acceptable to Buyer and shall include (a) a detailed description of the progress of the Facility's construction, (b) a statement of any significant issues which remain unresolved and

Seller's recommendations for resolving the same, (c) a summary of any significant events which are scheduled or expected to occur during the following thirty (30) days; and, (d) all additional information reasonably requested by Buyer. If Seller has reason to believe that the Facility is not likely to timely achieve any Milestone Deadline, including the Commercial Operation Date, Seller shall promptly provide written notice to Buyer with all relevant facts, and will provide Buyer with any other information Buyer may request from Seller in respects to such failure of Seller. Seller shall give written notice to Buyer no later than 30 days before Seller projects that the Facility will achieve Commercial Operation. Seller shall provide written notice to Buyer when the Commercial Operation Date has occurred. Following the Commercial Operation Date, Seller shall promptly provide to Buyer information requested by Buyer to verify any amounts of delivered Product, or to otherwise audit the Product delivered to Buyer. Seller shall, within ten (10) Business Days of electronic or 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 reasonably requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements reasonably determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority. Seller will, at its own expense, provide Buyer with all information requested by Buyer to register, verify, or otherwise obtain Commission or any other third-party recognition of the Product for use by Buyer, and at Buyer's request Seller shall register, verify, or otherwise validate or obtain Commission and/or any other third-party recognition of the Product for use by Buyer.

- 9.3.1 Information Under the Act. Seller agrees and acknowledges that the Act requires Seller to make certain filings and/or submissions, including, without limitation, to maintain registration and certification of the Facility under the Act and to use the Product for compliance under the Act. Seller shall provide Buyer, for informational purposes only, a copy of any report, certification or filing that Seller submits to the Commission, within a reasonable time after making such submission, but in any event no later than five (5) Business Days after such submission. Notwithstanding anything to the contrary, Seller agrees and acknowledges that it shall be solely responsible for timely complying with all requirements under the Act.

- 9.4 Forecasts. Seller shall prepare and provide Buyer with the Facility's forecasted Energy production. These non-binding forecasts of production will be determined and prepared in a Commercially Reasonable Manner with the intent of being as accurate as possible. Seller shall update a forecast any time information becomes available indicating a material change in the forecast relative to the most previously provided forecast.

- 9.4.1 Year-Ahead Forecasts. Seller shall, by December 1 of each Contract Year during the Term (except for the last Contract Year of the Term), provide Buyer with a forecast of each month's average-day Energy production from the Facility, by hour, for the following Contract Year. This forecast shall include an

expected range of uncertainty based on historical operating experience. Seller shall update the forecast for each month at least five (5) Business Days before the first Business Day of such month.

- 9.4.2 Week-Ahead Forecasts. By 1200 UTC on the Friday preceding the immediately upcoming week of delivery, Seller shall provide Buyer with an hourly forecast of deliveries for each hour of the upcoming week (Monday through Sunday).
- 9.4.3 Day-Ahead Forecasts. By 0900 UTC on the calendar day immediately preceding the day of delivery, Seller shall provide Buyer with an hourly forecast of deliveries for each hour of the next seven (7) days. If Seller has any information or other Commercially Reasonable basis to believe production from the Facility on any day will be materially lower or higher than what would otherwise be expected based on the forecasts provided, then Seller will inform Buyer of such circumstance by 0900 UTC on the preceding Business Day.
- 9.4.4 Communication. Seller shall communicate forecasts in a form, template, substance, and manner as requested by Buyer, which form, template, substance, and manner may be modified by Buyer from time to time. Forecasts shall be transmitted by email (to be sent to: RenewableEnergyForecast@duke-energy.com) or by other media, as Buyer may instruct Seller from time to time. Requested forecast data may include, but is not limited to, location, forecast timestamp, site capacity, a flag for actual or forecasted data, available site capacity, energy, reason for any capacity reduction, site plane of array (POA) irradiance, air pressure, and relative humidity for each hour of the next seven days. Timestamps for forecast will be in Coordinated Universal Time (UTC).
- 9.4.5 History. Seller shall prepare and provide Buyer with the Facility's historical Energy production by fuel type, if applicable. The historical production will be determined and prepared by Seller in a Commercially Reasonable Manner with the intent of being as accurate as reasonably possible. Seller shall update any correction to the history any time information becomes available.
- a. Daily History. By 0500 UTC on the Business Day immediately following the day of delivery, Seller shall provide Buyer with an hourly profile of deliveries for each hour of the previous seven days.
- b. History Communication. Seller shall communicate history in a form, template, substance, and manner as requested by Buyer (e.g. Excel template), which form, template, substance, and manner may be modified by Buyer from time to time. The History shall be transmitted by email (to be sent to: RenewableEnergyForecast@duke-energy.com) or by other media (e.g. website upload), as Buyer may instruct Seller from time to time. Requested historical data may include but is not limited to, location, site capacity, a flag for actual or forecasted data, available site capacity, energy generated, reason for any capacity reduction, site POA irradiance, air pressure, and relative humidity for each hour of the previous seven days.

10. **Metering.**

- 10.1 **Billing Meter.** In the Interconnection Agreement between Seller and Transmission Provider, Seller shall arrange with the Transmission Provider to construct and install such meters and metering equipment as are necessary to measure the Energy delivered and received in accordance with the terms and conditions of this Agreement, including performance requirements (whether one or more, the "Billing Meter"). Buyer shall provide to Seller the reasonable allowable accuracy limits relating to the performance of the Billing Meter, and Seller shall arrange with Transmission Provider to install and operate a Billing Meter that meets the allowable accuracy limits. Seller shall be responsible for paying the Transmission Provider for all costs relating to the Billing Meter, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with the Transmission Provider for the Billing Meter to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller hereby grants Buyer with rights to physically access the Billing Meter. Seller shall provide Buyer (at Seller's cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Seller may, at its own expense, install and maintain additional metering equipment for purposes of monitoring, recording, or transmitting data relating to its sale of Energy from the Facility, so long as such equipment does not interfere with the Billing Meter. Seller shall arrange with the Transmission Provider to test the Billing Meter at regular intervals. Seller shall also arrange for either Party to have the right to request and obtain, at reasonable intervals and under reasonable circumstances, additional/special tests of the Billing Meter. The Party making such request for the test shall incur the costs associated with such test.
- 10.2 **Additional Metering.** As permitted by Transmission Provider, each of Buyer and Seller may, at their own expense, install and maintain additional metering, and/or communication equipment for purposes of monitoring, recording or transmitting data relating to the amount of quantity of Products generated by the Facility (each, an "Additional or Secondary Revenue Quality Meter"). Each Party will provide the other with reasonable advance notice of, and will permit a representative of the other to witness and verify any inspections or tests of such Additional or Secondary Revenue Quality Meter; provided, however, that each Party will not unreasonably interfere with such inspections or testing.

11. **Billing Period and Payment.**

- 11.1 **Billing Period.** Buyer shall read/obtain data from the Billing Meter at regular intervals, which shall be not less than twenty-seven (27) consecutive days and not more than thirty-three (33) consecutive days (each, a "Billing Period") except for the initial and final billing periods hereunder which may be shorter to permit the readings to otherwise coincide with calendar months. Within twenty-five (25) days after reading/obtaining data from the Billing Meter, Buyer shall provide Seller with an invoice detailing the amount of Product delivered during the relevant Billing Period and the associated amount owed by Buyer to Seller for the Product, subject to Seller cooperating with Buyer and providing Buyer with such information and/or data that Buyer may request to accurately prepare the invoice. Buyer shall pay Seller the invoiced amounts for each Billing Period, subject to Seller having transferred (or caused to be transferred) the REC Certificates from Seller's Account to Buyer's

Account in the Tracking System in accordance with the terms of this Agreement. Payment by Buyer shall be due by the later of thirty (30) days after the invoice date or fifteen (15) days after Buyer receives notification that the Seller has transferred the REC Certificates into Buyer's Account. If such amounts are not paid by the deadline, they shall accrue interest at the Interest Rate from the applicable due date until the date paid. Amounts not paid by such deadline shall accrue interest at the Interest Rate from the original due date until the date paid in accordance with this Agreement.

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

correction; provided, however, no adjustment shall be made with respect to any invoice, statement, charge, computation or payment hereunder unless a Party provides written notice to the other Party questioning the accuracy thereof within twenty-four (24) months after the date of such invoice, statement, charge, computation, or payment.

12. **Audit Rights**

- 12.1 **Process.** Buyer shall have the right, at its sole expense and during normal business hours, without Seller requiring any compensation from Buyer, to examine and copy the records of Seller to verify the accuracy of any invoice, statement, charge, or computation made hereunder or to otherwise verify Seller's performance under this Agreement, including, without limitation, verifying that the delivered Product complies with the Agreement.
- 12.2 **Survival.** All audit rights shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months after the expiration or termination. Seller shall retain all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

13. **Taxes**

- 13.1 **Seller.** Seller shall be liable for and shall pay Buyer, or Seller shall reimburse Buyer if Buyer has paid or cause to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising prior its delivery to and at the Delivery Point (including ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Seller shall indemnify, defend, and hold harmless Buyer from any liability for such Taxes, including related audit and litigation expenses.
- 13.2 **Buyer.** Buyer shall be liable for and shall pay Seller, or Buyer shall reimburse Seller if Seller has paid or caused to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising after the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Buyer shall indemnify, defend, and hold harmless Seller from any liability for such Taxes, including related audit and litigation expenses.
- 13.3 **Remittances.** In the event Seller is required by any Requirements of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may request reimbursement of such payment from Buyer by sending Buyer an invoice, and Buyer shall include such reimbursement in the next monthly invoice and Buyer shall remit payment thereof. Conversely, if Buyer is required by any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder; Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds or remittances associated with such Taxes shall be administered in accordance with Section 11.1.
- 13.4 **Documentation.** A Party, upon written request of the other Party, shall promptly provide a certificate of exemption or other reasonably satisfactory evidence of

exemption if such Party is exempt from any Tax. Nothing herein shall obligate a Party to pay or be liable to pay any Taxes from which it is exempt pursuant to applicable law.

14. **Force Majeure.**

14.1 **Definition.** "Force Majeure" means: (A) war, riots, epidemics, pandemics, and plagues (including relating to COVID-19), floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, excessive winds, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (C) insurrection, rebellion, nationwide strikes; (D) an act of god or other such significant and material event or circumstance which prevents one Party from performing a material and significant obligations hereunder, which such event or circumstance was not anticipated as of the Effective Date, is not within the Commercially Reasonable control of, or the result of the 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 to the extent caused 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 regional or 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, that is not caused by an independent Force Majeure event ; (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 that is not caused by an independent Force Majeure event; (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 14.1(E)); (o) Seller's failure to obtain, or perform under, the Interconnection Agreement, or its other contracts and obligations to Transmission Provider; or (p) increased cost of electricity, steel, materials, equipment, labor, or transportation.

- 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 five (5) Business Days of 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. The burden of proof for demonstrating that an event of Force Majeure has occurred shall be on the Party claiming relief under this Agreement based on an event of Force Majeure.
- 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 one hundred eighty (180) 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; *provided, however*, that where the Force Majeure event cannot be remedied within one hundred eighty (180) days and the claiming Party can demonstrate to the non-claiming Party its intention and ability to implement a Commercially Reasonable plan to remedy such Force Majeure event within an additional one hundred eighty (180) days after the initial one hundred eighty (180) day period and the claiming Party uses Commercially Reasonable efforts to implement such plan, the non-claiming Party shall not have the right to terminate the Agreement until the expiration of such additional one hundred eighty (180) day period.
- 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, 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 a 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 reasonable 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. **Confidentiality.**

16.1 **Protected Information.** Except as otherwise set forth in this Agreement, neither Party (the "Receiving Party") shall, without the other Party's (the "Disclosing Party") prior written consent, disclose any Protected Information (as defined below) of the Disclosing Party to any third person (other than the Party's employees, affiliates, advisors, counsel, accountants, and current and prospective lenders and investors in the Facility who have a need to know such information, have agreed to keep such terms confidential, and for whom the Party shall be liable in the event of a breach of such confidentiality obligation), at any time during the Term or for five (5) years after the expiration or early termination of this Agreement. As used herein the term "Protected Information" means (a) this Agreement, and (b) any proprietary information of the Disclosing Party disclosed in connection with this Agreement, including without limitation, proposals and negotiations whether disclosed prior to or

after the date hereof that have been clearly marked as confidential or proprietary. Notwithstanding anything to the contrary herein: (i) The Seller hereby acknowledges and agrees that its participation in an RFP or award of a contract thereunder may be disclosed by Buyer or the Independent Evaluator of the RFP in one or more reports issued at the conclusion of the RFP process or as required under the rules of the RFP without the consent of the Seller; and (ii) in no event will Protected Information include the concept of constructing or providing energy from a power plant, using any specific fuel source, in any specific location. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief,) to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding any other provision of this Agreement, any claim related to or arising out of any confidentiality obligations herein may be brought directly in any state or federal court of competent jurisdiction in *[DEP - Wake County, North Carolina]* *[DEC - Mecklenburg County, North Carolina]*, in accordance with Section 26.5 of this Agreement, and shall not be subject to dispute resolution or arbitration pursuant to Section 23 of this Agreement.

- 16.2 Non-Confidential Information. Protected Information does not include information: (i) that is or becomes available to the public other than by disclosure of Receiving Party in breach of this Agreement; (ii) known to Receiving Party prior to its disclosure; (iii) available to Receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the Receiving Party without reliance upon the Protected Information.
- 16.3 Return of Confidential Information. Upon request of the Disclosing Party, the Receiving Party shall either (i) return the Disclosing Party's Protected Information, including all copies, or (ii) destroy the Disclosing Party's Protected Information, including all copies, and present written assurances of the destruction to Disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by the Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy any Protected Information stored on Back-Up Tapes; provided, however, any Protected Information of the Disclosing Party not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the Receiving Party may retain one (1) copy of such Protected Information in Receiving Party's files solely for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.
- 16.4 Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to the limitations set forth herein, disclose Protected Information to comply with the Act, request of any Governmental Authority, applicable Requirements of Law, or any exchange, control area or System operator rule, in response to a court order, or in connection with any court or regulatory proceeding. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the receiving Party agrees to give disclosing Party reasonable notice of any

discovery request or order, subpoena, or other legal process requiring disclosure of any Confidential Information. Such notice by the receiving Party shall give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to seek a protective order or similar relief, and the receiving Party shall not oppose such request or relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of receiving Party's notice, receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of receiving Party's legal counsel; provided, however, receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Information so disclosed.

- 16.5 Regulatory Disclosures by Buyer. This Section 16.5 will apply notwithstanding anything to the contrary in this Agreement. Seller acknowledges that Buyer is regulated by various regulatory and market monitoring entities. Buyer is permitted, in its sole discretion, to disclose or to retain and not destroy (in case of a future disclosure need as determined by Buyer in its sole discretion) any information (including Protected Information) to any regulatory commission (inclusive of the NCUC, SCPSC, FERC), NERC, market monitor, office of regulatory staff, and/or public staff, or any other regulator or legislative body without providing prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for any such disclosures or retentions in its sole discretion. In the event of the establishment of any docket or proceeding before any regulatory commission, public service commission, public utility commission, or other agency, tribunal, or court having jurisdiction over Buyer, the Protected Information shall automatically be governed solely by the rules and procedures governing such docket or proceeding to the extent such rules or procedures are additional to, different from, or inconsistent with this Agreement. In regulatory proceedings in all state and federal jurisdictions in which Buyer does business, Buyer will from time-to-time be required to produce Protected Information, and Buyer may do so without prior notice to Seller or consent from Seller, using Buyer's business judgment, and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. When a request for disclosure of information, including Protected Information, is made to Buyer, Buyer may disclose the information, including Protected Information, without prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Duke seeks for such disclosures in its sole discretion. Seller further acknowledges that Buyer is required by law or regulation to report certain information that could embody Protected Information from time-to-time, and Buyer may from time-to-time make such reports, without providing prior notice to Seller or consent from Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion.

17. **Mutual Representations and Warranties.**

- 17.1 As of the Effective Date (or other date specified herein) 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 It 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;
- 17.1.8 It is a "forward contract merchant" and this Agreement constitutes a "forward contract" as such terms are defined in the United States Bankruptcy Code;
- 17.1.9 It is, or shall be as of the Commercial Operation Date, an "eligible commercial entity" within the Commodity Exchange Act;
- 17.1.10 It is, or shall be as of the Commercial Operation Date, an "eligible contract participant" within the Commodity Exchange Act; and;
- 17.1.11 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 No Product (including any REC) has been, or will be, sold (other than to Buyer hereunder), retired, claimed, represented as part of any electricity output, use, or sale, or otherwise used to satisfy any renewable energy, efficiency, emissions, and/or offset obligation under the Act, or under any voluntary or mandatory standard, marketplace, or jurisdiction, or otherwise by Seller;
 - 18.1.2 All Product (including every REC) will meet the specifications and requirements in this Agreement, including without limitation, compliance with the Act;
 - 18.1.3 Each unit of the Product (including every REC) will be and was generated during the applicable Vintage;
 - 18.1.4 Seller has provided and conveyed and will provide and convey to Buyer all Capacity rights of any kind associated with the Facility and all Energy produced by the Facility;
 - 18.1.5 Seller has provided and conveyed and will provide and convey to Buyer all Renewable Energy Attributes and REA Reporting Rights associated with all Energy generated by the Facility as part of the Product being delivered to Buyer;
 - 18.1.6 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;
 - 18.1.7 Seller has not and will not double sell, double claim or any manner otherwise double count the Product (including, without limitation, any Capacity of the Facility or any REC, Renewable Energy Attributes, or REA Reporting Rights) in any manner (including, for example, by issuing a press release or otherwise claiming that Seller is creating any environmental benefit, using a renewable energy source, or selling renewable energy (in each case inclusive of thermal energy) to any person other than exclusively to and for the benefit of Buyer); Seller will not claim to for itself any of the Renewable Energy Attributes, "green energy", "clean energy", "carbon-free energy" or other rights sold to Buyer, in any public communication concerning the output of the Facility, the Facility or the RECs;
 - 18.1.8 Seller shall at all times be fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated, and;
 - 18.1.9 Seller has not and will not in any manner interfere with, encumber or otherwise impede Buyer's use, transfer, and sale of any 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 following, 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 under Section 6.2 (Seller Covenant) 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 Seller fails to comply with Section 7.1.1 and such failure is not remedied within three Business Days after Seller's receipt of written notice from Buyer;
- 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 If Seller, after construction of the Facility has begun but prior to the construction being completed (and, for the avoidance of doubt, prior to the Commercial Operation Date) ceases all construction, designing, development, testing, operations, and other activity on, for, or of the Facility for more than sixty (60) consecutive days; *provided, however*, that such cessation shall not be deemed an Event of Default if Seller can make a Commercially Reasonable demonstration to Buyer, in Buyer's Commercially Reasonable discretion, that in spite of such cessation the Facility will achieve Commercial Operation by the Commercial Operation Date as it may be extended pursuant to the terms of Section 20.5;
- 19.8 Seller fails to fully and timely achieve any of the Operational Milestone Schedule events (other than the Commercial Operation Date that is governed exclusively by Section 19.9 and 20.5); *provided, however*, that such failure shall not be deemed an Event of Default if Seller can make a Commercially Reasonable demonstration to Buyer, in Buyer's Commercially Reasonable discretion, that in spite of missing the Milestone Deadline the Facility will achieve Commercial Operation by the Commercial Operation Date as it may be extended pursuant to the terms of Section 20.5;
- 19.9 Seller withdraws at any time from the interconnection queue study process as specified in the RFP prior to Seller executing an Interconnection Agreement;
- 19.10 Seller fails to achieve Commercial Operation by the Commercial Operation Date (unless excused as a result of Force Majeure in accordance with article 14), as it may be extended pursuant Section 20.5;

- 19.11 The actual Nameplate Capacity Rating of the Facility is higher than the Nameplate Capacity Rating set forth in Exhibit D, or, as of the Commercial Operation Date is lower than the Nameplate Capacity Rating by more than five (5) percent of the Nameplate Capacity Rating set forth in Exhibit D;
- 19.12 Seller Abandons the Facility for more than sixty (60) consecutive days;
- 19.13 Seller fails to obtain or maintain the Facility's registration or certification as a Qualifying Facility under PURPA and such failure is not cured within thirty (30) days after Seller's receipt of written notice from Buyer;
- 19.14 Seller fails to obtain or maintain the Facility's registration as a New Renewable Energy Facility, and such failure is not cured within thirty (30) days after Seller's receipt of written notice from Buyer;
- 19.15 Seller fails to fully comply with the PURPA Fuel Requirements;
- 19.16 Seller delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by or stored in the Facility;
- 19.17 Seller delivers or attempts to deliver any Product (or component thereof) to any entity or person other than to the Buyer;
- 19.18 Seller fails to promptly and fully comply with a System Operator Instruction;
- 19.19 Seller fails to provide, replenish, renew, or replace the Performance Assurance in accordance with the requirements of this Agreement and/or otherwise fails to fully comply with the credit related requirements of this Agreement, including without limitation, Section 5, and any such failure is not cured within five (5) Business Days;
- 19.20 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 after Seller's receipt of written notice from Buyer;
- 19.21 [RESERVED];
- 19.22 A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and: (i) 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; or (ii) the resulting, surviving, transferee or successor entity fails to meet the Creditworthiness standards or, alternatively, post-Performance Assurance as required under this Agreement;
- 19.23 An assignment by a Party or Change of Control with respect to Seller, other than in compliance with Section 24;
- 19.24 A Party becomes Bankrupt;

- 19.25 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;
- 19.26 Seller violates the publicity obligations set forth in Section 26.10;
- 19.27 The Generating Facility fails to produce at least seventy percent (70%) of the Expected Annual Output in any Measurement Period;
- 19.28 The Storage Energy Capacity Rating of the Storage Facility determined pursuant to Exhibit K is less than the Guaranteed Storage Energy Capacity Rating in a given Measurement Period;
- 19.29 The Storage Availability of the Storage Facility determined pursuant to Exhibit L is less than seventy-five (75%) in a given Measurement Period;
- 19.30 The Storage Round Trip Efficiency of the Storage Facility determined pursuant to Exhibit M is less than the Guaranteed Storage Round Trip Efficiency, and such failure is not cured within sixty (60) days;
- 19.31 The actual Storage Ramp Rate of the Storage Facility fails to comply with the Storage Ramp Rate percentage specified in Exhibit N, and such failure is not cured within sixty (60) days; or
- 19.32 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 sixty (60) days after the Defaulting Party's receipt of written notice, provided that, if, despite the non-performing Party's diligent efforts, such Party is unable to remedy such failure in such sixty (60) day period but reasonably believes it is able to remedy such failure if given an additional thirty (30) day period, then after such additional thirty (30) day period.

20. **Early Termination.**

20.1 Early Termination.

- 20.1.1 Termination Due to Default. If an Event of Default with respect to a Defaulting Party has occurred and is continuing, 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").

- 20.1.2 Buyer's Limited Termination Right. If the Parties have entered into this Agreement prior to the execution of a Interconnection Agreement between Seller and the Transmission Provider, Buyer shall have the right to terminate this Agreement by providing written notice of termination to Seller if the Transmission Provider's cost for the estimated network upgrades specified in the completed, executable version of the Interconnection Agreement is greater than 125% of the estimated cost of these network upgrades calculated during Phase 1 of the Resource Solicitation Cluster (the "Excess Network Upgrade Costs"). Buyer may elect to terminate the Agreement, as permitted in this Section 20.1.2, by providing written notice ("Buyer's Termination Notice") to Seller no later than ten (10) Business Days after Buyer has submitted the completed execution version of the Interconnection Agreement for the Facility to Seller. Buyer's Termination Notice shall include documentation demonstrating that the conditions required under this Section 20.1.2 have been met. Buyer's termination pursuant to this Section 20.1.2 shall be effective as of the date specified in Buyer's Termination Notice which has been provided to Seller. Upon termination of the Agreement pursuant to the terms of this Section 20.1.2, neither Party shall have any further liability or obligations under this Agreement. If Buyer fails to provide Seller with a Buyer's Termination Notice, as required above, within the time period required under this Section 20.1.2, Buyer will be deemed to have waived its termination right hereunder and the Agreement will continue in full force and effect and each Party shall continue to be obligated to perform in accordance with the terms of this Agreement.
- 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 upon or 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 five (5) Business Days of delivery to the Defaulting Party of the notice of the Net Settlement Amount that the Defaulting Party is liable for. Notwithstanding anything to the contrary set forth herein, and as contemplated under Section 20.5, if Seller is the Defaulting Party and an Early Termination Date is established under this Section 20.3 prior to the Facility having achieved Commercial Operation, then the Net Settlement Amount shall equal the Default Liquidated Damages as specified in Section 20.5.1.

20.4 Payment. Any Net Settlement Amount will only be due and payable only 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.

20.5 Commercial Operation Date Liquidated Damages.

20.5.1 Failure to Achieve First COD Date. Notwithstanding anything to the contrary in this Agreement, to the extent an Event of Default occurs due to Seller's failure to timely achieve the Commercial Operation Date (unless excused as a result of Force Majeure in accordance with article 14) as set forth in Exhibit C (the "First COD Date"), then this Agreement shall terminate and Seller shall be liable to Buyer for liquidated damages in the amount of $[4\% \times \text{total projected revenue under the Agreement during the Term as determined by Buyer in its reasonable discretion}]$ (the "Default Liquidated Damages") which shall be due and payable by Seller within five (5) Business Days after the First COD Date; provided however, if no later than twenty (20) Business Days prior to the First COD Date Seller notifies Buyer in writing that Seller reasonably believes that it will be unable to achieve Commercial Operation by the First COD Date and Seller also notifies Buyer in writing that Seller desires to continue performance under this Agreement, then this Agreement shall remain in full force and effect and upon payment of liquidated damages to Buyer in the amount of $[25\% \text{ of the Default Liquidated Damages}]$ (the "Initial Liquidated Damages") within five (5) Business Days after the First COD Date, Seller shall have up to an additional one hundred eighty (180) days from the First COD Date to achieve Commercial Operation (such extended date, the "Second COD Date"); provided however, no Initial Liquidated Damages shall be due to Buyer if Seller actually achieves Commercial Operation on or before the First COD Date.

20.5.2 Second COD Date. If Seller achieves Commercial Operation on or before the Second COD Date Seller shall pay Buyer additional liquidated damages, within five (5) Business Days of achieving the Second COD Date, in the amount of 75% of the Default Liquidated Damages divided by 180 U.S. _____ dollars (\$_____) per day (the "Per Diem Liquidated Damages") for each day that Commercial Operation was delayed beyond the First COD Date up to and including the one hundred eightieth (180th) day following the First COD Date as per diem liquidated damages for failing to timely achieve Commercial Operation by the First COD Date.

20.5.3 Failure to Achieve Second COD Date. If Seller fails to achieve Commercial Operation by the Second COD Date (i.e., within one hundred eighty (180) days following the First COD Date) then this Agreement will terminate and

Seller will be liable to Buyer and will pay Buyer, within five (5) Business Days of such failure, additional liquidated damages (in addition to the Initial Liquidated Damages paid under Section 20.5.1) in the amount of [the Default Liquidated Damages 75% of the Default Liquidated Damages _____ U.S. dollars (\$_____).

20.5.4 Exclusive Remedy. The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if Seller does not achieve Commercial Operation by the promised Commercial Operation Date. Accordingly, the Parties agree that if Seller does not meet the promised Commercial Operation Date (as may be extended under this Section 20.5), Buyer's sole remedy for that delay shall be to recover from Seller as liquidated damages, and not as a penalty, the amount of liquidated damages specified in this Section 20.5. The agreed upon delay liquidated damages shall not limit Buyer's remedies for other breaches, actions or omissions of Seller under this Agreement.

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

21. **Cover Costs.**

21.1 Exclusive Remedies. Except where a specific and exclusive remedy is otherwise set forth in this Agreement, 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 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 two (2) times the per unit Contract Price.

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 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 two (2) times the per unit Contract Price.

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, COVER COSTS, 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 a direct loss, 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 Demand for Arbitration.

23.2.1 If a Dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party's initial notice, the Parties shall fully and finally settle the Dispute by binding arbitration administered by the American Arbitration Association ("AAA"), or such other nationally recognized arbitration association or organization as the Parties may mutually agree. The Arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules then in effect, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. To the extent the AAA Rules conflict with any provision of Section 23 of this Agreement, the terms of this Agreement shall govern and control.

23.2.2 Either Party may serve the demand for arbitration on the other Party; provided, however, no demand for arbitration shall be made or permitted after the date when the institution of a civil action based on the Dispute would be barred by the applicable statute of limitations or repose.

23.2.3 All arbitration proceedings shall take place in *[DEC - Charlotte]* *[DEP - Raleigh]*, North Carolina.

23.2.4 A single arbitrator will arbitrate all Disputes where the amount in controversy is less than five-hundred thousand U.S. dollars (\$500,000), and will be selected by the Parties or by the AAA if the Parties cannot agree to the arbitrator. Such arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry. The cost of the arbitrator(s) shall be borne equally by the Parties.

- 23.2.5 A panel of three (3) arbitrators will conduct the proceeding when the amount in controversy is equal to or more than five hundred thousand U.S. dollars (\$500,000). If the Parties have not so agreed on such three (3) arbitrator(s) on or before thirty (30) days following the delivery of a demand for Arbitration to the other Party, then each Party, by notice to the other Party, may designate one arbitrator (who shall not be a current or former officer, director, employee, or agent of such Party or any of its Affiliates). The two (2) arbitrators designated as provided in the immediately preceding sentence shall endeavor to designate promptly a third (3rd) arbitrator.
- 23.2.6 If either Party fails to designate an initial arbitrator on or before forty five (45) days following the delivery of an arbitration notice to the other Party, or if the two (2) initially designated arbitrators have not designated a third (3rd) arbitrator within thirty (30) days of the date for designation of the two (2) arbitrators initially designated, any Party may request the AAA to designate the remaining arbitrator(s) pursuant to its Commercial Arbitration Rules. Such third (3rd) arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry.
- 23.2.7 If any arbitrator resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party entitled to designate that arbitrator shall designate a successor.
- 23.3 Discovery. Either Party may apply to the arbitrators for the privilege of conducting discovery. The right to conduct discovery shall be granted by the arbitrators in their sole discretion with a view to avoiding surprise and providing reasonable access to necessary information or to information likely to be presented during the arbitration, provided that such discovery period shall not exceed sixty (60) Business Days.
- 23.4 Binding Nature. The arbitrator(s)' decision shall be by majority vote (or by the single arbitrator if a single arbitrator is used) and shall be issued in a writing that sets forth in separately numbered paragraphs all of the findings of fact and conclusions of law necessary for the decision. Findings of fact and conclusions of law shall be separately designated as such. The arbitrator(s) shall not be entitled to deviate from the construct, procedures, or requirements of this Agreement. The award rendered by the arbitrator(s) in any arbitration shall be final and binding upon the Parties, and judgment may be entered on the award in accordance with applicable law in any court of competent jurisdiction.
- 23.5 Consolidation. No arbitration arising under the Agreement shall include, by consolidation, joinder, or any other manner, any person not a party to the Agreement unless (a) such person is substantially involved in a common question of fact directly relating to the Dispute; provided however, such person will not include any Governmental Authority, (b) the presence of the person is required if complete relief is to be accorded in the arbitration, and (c) the person has consented to be included.
- 23.6 Mediation. At any time, prior or subsequent to a Party initiating arbitration, the Parties may mutually agree to (but are not obligated to) attempt to resolve their Dispute by non-binding mediation, using a mediator selected by mutual agreement. The mediation shall be completed within thirty (30) Business Days from the date on which the Parties agree to mediate. Unless mutually agreed by the parties, any

mediation agreed to by the Parties shall not delay arbitration. The Parties shall pay their own costs associated with mediation and shall share any mediator's fee equally. The mediation shall be held in Raleigh, North Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction.

- 23.7 Remedies. Except for Disputes regarding confidentiality arising under Section 16 of this Agreement, 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). Preservation of these remedies does not limit the power of the arbitrator(s) to grant similar remedies, and despite such actions, the Parties shall continue to participate in and be bound by the dispute resolution procedures specified in Section 23.
- 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 during 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, 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 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 Performance Assurance in the amount required under this Agreement, and such enforceability assurance as the Buyer may request in its Commercially Reasonable discretion. Notwithstanding anything to the contrary herein, Buyer may pledge, encumber, or assign this Agreement without the consent of Seller to any Person that is Creditworthy, or that has provided Seller with a guaranty substantially in the form of Exhibit F from a Creditworthy credit support provider guaranteeing the assignee's obligations hereunder, and that has agreed in writing to assume the obligations of Buyer hereunder.

- 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 or compromise, modify or affect any rights, benefits or risks of Buyer under this Agreement.
- 24.3 Acknowledgement of Non-Default. Provided that Seller is not in default of its obligations under this Agreement, upon reasonable request by Seller, Buyer will execute a written acknowledgement of non-default in the form of Exhibit H attached hereto (the "Acknowledgement") which shall be based on the actual knowledge of Buyer's personnel responsible for administering the Agreement at the time of the execution of the Acknowledgement and after due inquiry of Buyer's internal records only. Notwithstanding any provision to the contrary set forth in the Acknowledgment, Buyer reserves all rights and defenses available to it under the Agreement, and nothing stated therein shall be deemed to have waived, amended or modified any such rights or defenses. In no event shall the issuance of any Acknowledgement introduce any third party to this Agreement or create any rights, including third party beneficiary rights for any Person under this Agreement.
- 24.4 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.
- 24.5 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 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.
- 24.6 Cost Recovery. Without limiting Buyer's rights under this Section 24, to the extent Buyer agrees to a request from Seller for one or more consent(s) to Assignment or Change of Control under this Agreement, Seller shall pay Buyer ten thousand dollars (\$10,000) prior to Buyer processing Seller's request.
25. **Notices**.
- 25.1 Process. All notices, requests, or invoices shall be in writing and shall be sent to the 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.

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, except that the cost of the arbitrator(s) will be allocated equally between the Parties as provided in Section 23. Notwithstanding the foregoing, in the event that the Commission is required to adjudicate any Disputes related to this Agreement and the Independent Evaluator's fees and costs related to such Dispute exceed program fees collected from Market Participants (as defined in the RFP), the non-prevailing party shall be responsible for all excess Dispute-related fees and costs incurred by the Independent Evaluator in connection with the Dispute.
- 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 customer 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 [SOUTH 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. Except for Disputes that are subject to Arbitration as provided herein, 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 [DEP - Wake County, North Carolina] [DEC Mecklenburg County, North Carolina]. The Parties hereto irrevocably consent to the jurisdiction of any federal or state court within in [DEP - Wake County, North Carolina] [DEC Mecklenburg 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 that is not subject to Arbitration shall occur in federal or state court in [DEP - Wake County, North Carolina] [DEC - Mecklenburg 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 output (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 at a price that exceeds the Contract Price. 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. Seller authorizes the Buyer to record notice of the foregoing in the real estate records.
- 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 Publicity.
- 26.10.1 Limitation on Seller. Seller shall not make any announcement or release any information concerning or otherwise relating to this Agreement to any member of the public, press, Person, official body, or otherwise without Buyer's prior written consent, which shall not be unreasonably withheld; provided, however, any content approved by Buyer shall be limited to the non-confidential facts of the Agreement and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 26.10.2 Limitation on the Parties. Neither Party shall make any use of the other Party's name, logo, likeness in any publication, promotional material, news release, or similar issuance or material without the other Party's prior review, approval, and written consent. Seller agrees and acknowledges that any reference or likeness to "Duke" shall be a prohibited use of Buyer's name, logo, likeness. Seller agrees and acknowledges that any direct or indirect implication of any endorsement, partnership, support, or testimonial of Seller by Buyer is prohibited, and any such use, endorsement, partnership, support, and/or testimonial will be an Event of Default under this Agreement. Subject to the foregoing, either Party may disclose to the public general information in connection with the Party's respective business activities; *provided, however*, no such disclosure or publicity by Seller will directly or indirectly imply any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 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.]

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

[DUKE ENERGY CAROLINAS, LLC]

[DUKE ENERGY PROGRESS, LLC]

BY: _____

NAME:

TITLE:

DATE:

[SELLER]

BY: _____

NAME:

TITLE:

DATE:

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Exhibit A

Monthly and Annual Energy Production

[_____] ⁴²₌

⁴²₌ NTD: Seller to provide table detailing the monthly and annual Energy Production.

Exhibit BStorage Price ~~Adder~~Adjustment

The Storage Price ~~Adder~~Adjustment, if applicable, under Section 4.5.2 shall be as follows:

(i) Network Upgrade Cost Adder shall be calculated in accordance with the following formula:
[(insert Part D Bid Price (\$/Mw)] x (actual upgrade costs specified in the Final Accounting Report
+ applicable Carrying Cost interest from (ii) below) / \$1 million

(ii) Carrying Cost Adjustment shall be calculated in accordance with the following formula:
[Carrying Cost Interest Rate applied to the amount of time past 11/30/2030 to Assumed In Service
Date and the Network Upgrade deposit paid = Carrying Cost interest]

~~[]~~.

Where:

"Assumed In Service Date" is the sooner of the original Interconnection Facilities and System
Upgrades In-Service Date ("ISD") established in the Interconnection Agreement or the actual ISD. If
the Seller requests an extension of the ISD and an amendment to the IA is made based on the
request of the Seller, the "Assumed In Service Date" used will be the original ISD and not the
extension.

Carrying Cost Interest Rate means: the lesser of 5% or the average Interest Rate as defined in 1.62
annualized.

Interest rate is applied to Network Upgrade deposit paid, as specified in the Interconnection
Agreement.

Carrying Cost Interest will be added to the actual upgrade costs specified in the Final Accounting
Report in order to calculate the Network Upgrade Cost Adder (as describe in (i)).

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Exhibit C

Operational Milestone Schedule⁵³

Deadline	Performance/Result Seller Must Timely Achieve
As required under applicable interconnection procedures	Interconnection Agreement Executed
Please provide date	Financing Milestone Commitment
Please provide date	Substation Pad Complete
Please provide date	Required Permits and Approval Deadlines
Please provide date	Commencement Readiness Requirements
90 calendar days after the Interconnection Facilities and System Upgrades In-Service Date, and extended day-to-day for any delays not caused by the Seller.	Commercial Operation Date

1. **Financing Milestone Commitment.** If third party financing is being obtained by Seller to construct the Facility, Seller shall deliver to Buyer a letter of commitment for full project financing meeting all of the minimum requirements set forth below, as determined by Buyer in Buyer's sole Commercially Reasonable discretion. Buyer has no responsibility or obligation of any kind to Seller or any other person or entity with respect to Seller in connection with Seller's financing or the Financing Milestone Commitment.
 - 1.1. Fully-underwritten and binding (not "best efforts," a term sheet, or some lesser commitment).
 - 1.2. In an amount that is, along with fully underwritten and committed equity, adequate funding for the construction and operation of the project.
 - 1.3. Full agreement of the lender and Seller with respect to term, interest rates, fees and other economics of the lending transaction.
 - 1.4. Lender has approved the form of the power purchase agreement, turbine/panel supply agreement, engineering procurement and construction contract and other significant project agreements, subject only to the execution and delivery of those documents, as well as the construction budget for the project, and that the lender has completed all necessary due diligence.
 - 1.5. Lender retains no further approval rights with respect to size, site or technical aspects of the project.
 16. .Free of conditions to effectiveness relating to further equity commitments, the confirmation of tax attributes, the approvals of other public or private third parties or the satisfactory completion of third party reports or assessments (environmental, insurance or otherwise).
 - 1.7. Not require any bonds or performance guarantees that have not already been obtained.

⁵³ NTD: To be completed by Seller for Buyer's approval.

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- 1.8. No general condition to financing that the lender be satisfied with the project in its discretion.
- 1.9. Fully executed by the lender and the Seller.
2. If Seller (or its Affiliate) is balance sheet financing the construction of the Facility, Seller shall satisfy this Financial Milestone Commitment by delivering to Buyer evidence of Seller's, or its Affiliate's, approval for funding in an amount adequate for the construction of the Facility.
3. **Substation Pad Complete.** Substation pad, access roads, and right-of-way built and cleared by Seller. As-built surveys (provided by a licensed surveyor) and substation pad civil tests complete and accepted by Buyer.
4. **Required Permits and Approval Deadlines.** Seller shall deliver to Buyer a list of required Permits and deadlines to secure each of those Permits. Seller shall identify and list all Permits customary and necessary for Seller to design, construct, test, commission, and fully operate the Facility. Seller shall also identify and list the deadline by which Seller must secure all final Permits for Seller to achieve the Commercial Operation Date set forth above in this Exhibit C and such final deadline shall be deemed to be a Milestone Deadline. Seller shall keep Buyer informed of its efforts to secure the Permits. For each identified Permit, Seller shall provide Buyer written notice, and any supporting documentation requested by Buyer in its Commercially Reasonable Discretion, that the identified Permits have been obtained, including, without limitation, any approvals from the local Governmental Authority approving the land use, site plan and construction of the Facility.
5. **Commencement Readiness Requirements.** Seller shall deliver to Buyer the list of major development and construction activities, together with deadlines for the commencement and successful completion of those activities for Seller to achieve the Commercial Operation Date set forth in this Exhibit C. The list of major development and construction activities, together with commencement and completion deadlines, shall include each of the activities set forth below. Each such major development and construction activity shall be deemed to be an Operational Milestone, and the deadline by which Seller must successfully complete each such activity for Seller to achieve the Commercial Operation Date set forth in this Exhibit C shall be deemed to be a Milestone Deadline. For each identified activity, Seller shall provide Buyer written notice, and any supporting documentation requested by Buyer in its Commercially Reasonable Discretion, that the identified activity has been commenced and/or successfully completed.
 - 5.1. Proof of Seller's rights and interest in the site upon which the Facility is to be constructed, including the applicable sale agreement or long-term lease.
 - 5.2. Delineation of any long lead-time procurement items, including a schedule for ordering and proof of such activity.
 - 5.3. A project key milestone schedule, reflecting the critical milestone events for design and construction of the facility including the date upon which Seller shall achieve: thirty and ninety percent detailed design; site mobilization and commencement; mechanical completion; substantial completion; and final completion.
 - 5.4. Identification of Seller's key personnel, with primary responsibility for the design and construction of the Facility and communications with Buyer.
 - 5.5. Seller's operations and maintenance plan.
 - 5.6. Seller's performance and capacity testing plan and performance guarantees, in which Seller defines the performance output requirements of the Facility and describes the procedures and timing for all testing that will be conducted to demonstrate whether the Facility meets the applicable performance requirements and conditions.
 - 5.7. Seller shall be in compliance with the milestone schedule set forth in the Interconnection Agreement and shall be on schedule to achieve Commercial Operation by the Commercial Operation Date.

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Exhibit D

Facility Information⁶⁴

The Facility covered under this Agreement is hereby identified as follows:

1. Name of Facility:
 - (a) Location: [County, State]
 - (b) Location: [GPS COORDINATES]
 - (c) Point of Delivery: [_____]
 - (d) Legal Description of the Premises: See real property documents in Exhibit E.
 - (e) Describe easements secured for physical entrance of permanent and temporary equipment (e.g. drive way and cable/wire easements)
2. Seller: [_____]
3. Ultimate parent: [_____]
4. Qualified Operator: [_____]
5. Type of Storage Facility:
 - Battery technology (& chemistry if chemical battery): _____
 - Type of Battery Storage Design: [____] AC-Coupled [~~_____~~] ~~DC-Coupled~~
 - Brand & Model: _____
 - Number of Units: _____
 - PCS or EMS or DSM: _____
 - Battery Management System: _____
6. Operating Characteristics of Storage Facility available to Buyer:
 - (a) Charging power capacity at the Storage Facility Metering Point: ____ MW
 - (b) Discharging power capacity at the Storage Facility Metering Point: ____ MW
 - (c) Maximum MW Output
 - (d) Minimum MW Output
 - (e) Allowed Depth of Discharge
 - (f) Average State of Charge (SoC)
7. Additional technology specific information, if any:
 - a. The design of the Storage Facility must contemplate improvements to accommodate technology and market changes as contemplated by Section E of Exhibit J.
8. A layout of the Facility, including site boundaries of the Premises and the Point of Delivery, the Storage Facility Metering Point and the Generating Facility Metering Point, to be attached to this Exhibit B.

⁶⁴ NTD: To be completed by Seller for Buyer's approval.

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Exhibit E

Reserved

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Exhibit F

Form of Guaranty

THIS GUARANTY AGREEMENT (this "Guaranty"), dated as of [date], is issued and delivered by [**enter corporate legal name**], a [state] [form of entity] (the "Guarantor"), for the account of [**enter corporate name**], a [state] [form of entity] (the "Obligor"), and for the benefit of [**enter corporate name**], a [state] [form of entity] (the "Beneficiary").

Background Statement

WHEREAS, the Beneficiary and Obligor entered into that certain _____ dated _____ (the "Agreement"); and

WHEREAS, Beneficiary has required that the Guarantor deliver to the Beneficiary this Guaranty as an inducement to enter into the Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the Guarantor hereby agrees as follows:

1. Guaranty; Limitation of Liability. Subject to any rights, setoffs, counterclaims and any other defenses that the Guarantor expressly reserves to itself under this Guaranty, the Guarantor absolutely and unconditionally guarantees the timely payment of the Obligor's payment obligations under the Agreement (the "Guaranteed Obligations"); provided, however, that the Guarantor's aggregate liability hereunder shall not exceed [**amount**] **U. S. Dollars (U.S. [\$xx,xxx,xxx])**.

Subject to the other terms of this Guaranty, the liability of the Guarantor under this Guaranty is limited to payments expressly required to be made under the Agreement, and except as specifically provided therein, the Guarantor shall not be liable for or required to pay any consequential or indirect loss (including but not limited to loss of profits), exemplary damages, punitive damages, special damages, or any other damages or costs.

2. Effect of Amendments. The Guarantor agrees that the Beneficiary and the Obligor may modify, amend and supplement the Agreement and that the Beneficiary may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Beneficiary.

3. Waiver of Rights. The Guarantor expressly waives (i) protest, (ii) notice of acceptance of this Guaranty by the Beneficiary, and (iii) demand for payment of any of the Guaranteed Obligations.

4. Reservation of Defenses. Without limiting the Guarantor's own defenses and rights hereunder, the

Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses that the Obligor may have to payment of all or any portion of the Guaranteed Obligations except defenses arising from the bankruptcy, insolvency, dissolution or liquidation of the Obligor and other defenses expressly waived in this Guaranty.

5. Settlements Conditional. This guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any monies paid to the Beneficiary in reduction of the indebtedness of the Obligor under the Agreement have to be repaid by the Beneficiary by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force, and the liability of the Guarantor under this Guaranty shall be computed as if such monies had never been paid to the Beneficiary

6. Notice. The Beneficiary will provide written notice to the Guarantor if the Obligor defaults under the Agreement.

7. Primary Liability of the Guarantor. The Guarantor agrees that the Beneficiary may enforce this Guaranty without the necessity at any time of resorting to or exhausting any other security or collateral. This is a continuing Guaranty of payment and not merely of collection.

8. Representations and Warranties. The Guarantor represents and warrants to the Beneficiary as of the date hereof that:

- a. The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;
- b. The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- c. All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and

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effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

- d. This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

9. Nature of Guaranty. The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the Obligor under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by Beneficiary concerning any provisions of the Agreement; the rendering of any judgment against the Obligor or any action to enforce the same; any failure by Beneficiary to take any steps necessary to preserve its rights to any security or collateral for the Guaranteed Obligations; the release of all or any portion of any collateral by Beneficiary; or any failure by Beneficiary to perfect or to keep perfected its security interest or lien in any portion of any collateral.

10. Subrogation. The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Guaranteed Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Guaranteed Obligations, the Guarantor shall be subrogated to the rights of Beneficiary against the Obligor, and Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. Term of Guaranty. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all the Guaranteed Obligations have been discharged, and (ii) [date] (the "Expiration Date"); provided however, the Guarantor will remain liable hereunder for Guaranteed Obligations that were outstanding prior to the Expiration Date.

12. Governing Law. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to principles of conflicts of law.

13. Expenses. The Guarantor agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel) relating to the enforcement of the Beneficiary's rights hereunder in the event the Guarantor disputes its obligations under this Guaranty and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted

appeals), that the Beneficiary is entitled to receive payment of a portion of or all of such disputed amounts.

14. Waiver of Jury Trial. The Guarantor and the Beneficiary, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

15. Entire Agreement; Amendments. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary.

16. Headings. The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

17. No Third-Party Beneficiary. This Guaranty is given by the Guarantor solely for the benefit of the Beneficiary, and is not to be relied upon by any other person or entity.

18. Assignment. Neither the Guarantor nor the Beneficiary may assign its rights or obligations under this Guaranty without the prior written consent of the other, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Beneficiary may assign this Guaranty, without the Guarantor's consent, provided such assignment is made to an affiliate or subsidiary of the Beneficiary

Any purported assignment in violation of this Section 18 shall be void and without effect.

19. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing or sent by electronic mail to the Guarantor or to the Beneficiary, as applicable, at its address as indicated below:

If to the Guarantor, at:

[Guarantor name]

[Address]

Attention: [contact]

Email:[email address]

With a copy to:

[Seller name]

[Address]

Attention: [contact]

Email:[email address]

If to the Beneficiary, at:

[Beneficiary name]

[Address]

Attention: [contact]

Email:[email address]

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or such other address as the Guarantor or the Beneficiary shall from time to time specify. Notice shall be deemed given (a) when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail or (b) when received, as evidenced by email confirmation, if sent by email and received on or before 4 pm local time of recipient, or (c) the next business day, as evidenced by email confirmation, if sent by email and received after 4 pm local time of recipient.

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IN WITNESS WHEREOF, the Guarantor has executed this
Guaranty as of the day and year first above written

[Guarantor name]

By: _____
Name:
Title:

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Exhibit G

Form of Letter of Credit

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: _____

Date: _____

Beneficiary:

[Insert Buyer Name from PPA]
Attn: Chief Risk Officer (ST30)
400 S. Tryon Street
Charlotte, North Carolina 28202

Ladies and Gentlemen:

By the order of:

Applicant:

We hereby issue in your favor our irrevocable standby letter of credit No.: _____ for the account of _____ for an amount or amounts not to exceed _____ US Dollars in the aggregate (US\$ _____) available by your drafts at sight drawn on [Issuing Bank] effective _____ and expiring at our office on _____ (the "Expiration Date").

The Expiration Date shall be deemed automatically extended without amendments for one year from the then current Expiration Date unless at least ninety (90) days prior to the then applicable Expiration Date, we notify you in writing by certified mail return receipt requested or overnight courier that we are not going to extend the Expiration Date. During said ninety (90) day period, this letter of credit shall remain in full force and effect

Funds under this letter of credit are available against your draft(s), in the form of attached Annex 1, mentioning our letter of credit number and presented at our office located at [Issuing Bank's address must be in US] and accompanied by a certificate in the form of attached Annex 2 with appropriate blanks completed, purportedly signed by an authorized representative of the Beneficiary, on or before the Expiration Date in accordance with the terms and conditions of this letter of credit. Partial drawings under this letter of credit are permitted.

Certificates showing amounts in excess of amounts available under this letter of credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this letter of credit.

We engage with you that drafts drawn under and in conformity with the terms of this letter of credit will be duly honored on presentation if presented on or before the Expiration Date. Presentation at our office includes presentation in person, by certified, registered, or overnight mail.

Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [Issuing Bank] under this letter of credit is the individual obligation of [Issuing Bank] and is in no way contingent upon reimbursement with respect hereto.

This letter of credit is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 ("ISP98"). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.

We shall have a reasonable amount of time, not to exceed three (3) business days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly.

Kindly address all communications with respect to this letter of credit to [Issuing Bank's contact information], specifically referring to the number of this standby letter of credit.

All banking charges are for the account of the Applicant.

This letter of credit may not be amended, changed or modified without our express written consent and the consent of the Beneficiary.

This letter of credit is transferable, and we agree to consent to its transfer, subject to our standard terms of transfer and your payment to us of our standard transfer fee.

Very truly yours
[Issuing Bank]

Authorized Signer

Authorized Signer

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This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 1

FORM OF SIGHT DRAFT

[Insert date of sight draft]

To: *[Issuing Bank's name and address]*

For the value received, pay to the order of _____ by wire transfer of immediately available funds to the following account:

[name of account]

[account number]

[name and address of bank at which account is maintained]

[aba number]

[reference]

The following amount:

[insert number of dollars in writing] United States Dollars

(US\$ *[insert number of dollars in figures]*)

Drawn upon your irrevocable letter of credit No. *[irrevocable standby letter of credit number]* dated *[effective date]*

[Beneficiary]

By: _____

Title: _____

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

ANNEX 2

FORM OF CERTIFICATE

[Insert date of certificate]

To: *[issuing bank's name and address]*

[check appropriate draw condition]

[_____] An Event of Default (as defined in the [Name of Agreement between [Beneficiary's Name] and [Insert Counterparty's Name] dated as of _____ (the "Agreement")) has occurred with respect to [Counterparty's Name] and such Event of Default has not been cured within the applicable cure period, if any provided for in the Agreement.

Or

[_____] [Counterparty's Name] is required, pursuant to the terms of the Agreement, to maintain a letter of credit in favor of [Beneficiary's Name], has failed to renew or replace the Letter of Credit and the Letter of Credit has less than thirty (30) days until the expiration thereof.

[Beneficiary]

By: _____

Title: _____

Exhibit H

Acknowledgement of Non-Default

[Print Duke Energy letterhead]

Date:

Address of Seller

Re: Acknowledgement of Non-Default (the "Acknowledgement") of the Renewable Power Purchase Agreement, between [Duke Energy Carolinas, LLC] [Duke Energy Progress, LLC] ("Buyer") and [insert Seller name] dated as of _____ (the "Agreement").

Dear Sir or Madam:

The undersigned, a duly authorized representative of Buyer hereby acknowledges to Seller as follows:

1. The copy of the Agreement attached hereto as Exhibit A (including any amendments thereto) constitutes a true and complete copy of the Agreement;
2. Buyer has not transferred or assigned its interest in the Agreement; and
3. as of the date of this Acknowledgement based on the actual knowledge of Buyer's personnel responsible for administering the Agreement after due inquiry of Buyer's internal records only, there is no current Event of Default by Seller or Buyer under the Agreement, nor to Buyer's knowledge, has any event or omission occurred which, with the giving of notice or the lapse of time or both, would constitute an Event of Default under the Agreement and the Agreement is in full force and effect.

Notwithstanding any provision to the contrary set forth herein, Buyer reserves all rights and defenses available to it under the Agreement and nothing stated herein shall be deemed to have waived, amended or modified any such rights or defenses.

Except as specified herein to the contrary, capitalized terms used in this Acknowledgement shall have the meaning ascribed to such terms in the Agreement.

Sincerely,

[Duke Energy Carolinas, LLC] [Duke Energy Progress, LLC]

By: _____

Name:

Title:

Exhibit I

Facility Output Points

Power Plant Controller Output Points			
Analog	Units of Measure	Accuracy	Notes
Estimated Unit Active Power Operating High Limit		± 5 %	Estimated Solar Generation currently possible given current equipment status, equipment characteristics, and current ambient conditions. Calculation based on site rating, percentage of inverters in service, POA irradiance, DC/AC ratio, ambient conditions, etc.
Estimated Unit Active Power Operating Low Limit		± 5 %	Estimated Minimum Solar Generation currently possible given current equipment status, equipment characteristics, and current ambient conditions. Calculation based on site rating, percentage of inverters in service, POA irradiance, DC/AC ratio, ambient conditions, etc.
SITE AMBIENT TEMPERATURE444	Degree F	± 1 ⁰	Weighted average ambient temperature from all site weather stations with logic to eliminate inputs with suspect quality. Weighting based on each reading's proximity to equipment.
BACKPANEL TEMPERATURE - Average of all measurements available at facility with logic to eliminate any inputs with suspect data quality	Degree F	± 1 ⁰	Average of all Temperature sensors mounted behind solar
Plane Of Array Irradiance – Weighted Average of all Meters available at facility with logic to eliminate any inputs with suspect data quality	Watts/Sq. Meter	± 25 W/m ²	Measured with Class II pyranometers or equivalent equipment. For fixed-tilt sites, the sensor shall be mounted on a meteorological station facing the same angle and direction as the solar photovoltaic panels at the site. For tracking sites, the sensor shall be mounted on a tracker to be oriented at the same angle and direction as the solar photovoltaic panels at the site.
Net active power generation to GSU	MW	± 2 %	The generation resource's 3-phase active power output measured at the low side of the step-up transformer.
Net reactive power generation to GSU	MVAR	± 2 %	The generation resource's 3-phase reactive power output measured at the low side of the step-up transformer.
Global Horizontal Irradiance – Weighted average of all Meters available at facility with logic to eliminate any inputs with suspect data quality	Watts/Sq. Meter	± 25 W/m ²	Measured with a Class II pyranometer or equivalent equipment. The sensor shall be mounted on a metrological station set at the global horizontal angle of the earth in reference to the sun solar radiation.
A phase current	AMP	± 2 %	Phase AC A Amps measured on the low side of the step-up transformer.
B phase current	AMP	± 2 %	Phase AC B Amps measured on the low side of the

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			step-up transformer.
C phase current	AMP	± 2 %	Phase AC C Amps measured on the low side of the step-up transformer.
Line-to-Line Voltage A-B	kV	± 2 %	Phase A to Phase B Voltage line to line voltage measured on the low side of the step-up transformer.
Total number of PV facility inverters in operational ready status			Count of PV facility inverters in operation
Solar Plant Active Power Setpoint	MW	± 2 %	Solar Plant Supervisory Control System Active Power Setpoint
Solar Plant Active Power Ramp Rate	MW/Min	± 1 MW/min	Solar Plant Supervisory Control System Active Power Ramp Rate
Plant Point of Interconnection Voltage Setpoint	kV	± 2 %	Solar Plant Control System POI Voltage Control Setpoint (KV)
Plant Point of Interconnection Voltage Setpoint Deadband	kV	± 2 %	Solar Plant Control System POI Voltage Control deadband (KV)
Digital (Binary)	Status	Accuracy	Notes
PV Generator Remote ECC POI Setpoint Mode Status			Enabled/Disabled - Solar Plant curtailment control operational status
PV Generator Automatic Voltage Regulation Status			ON/OFF
PV Generator Low Tension Circuit Breaker Status			OPEN/CLOSED; if multiple LT breakers connect to the GSU transformer, this point value shall be a logical OR of all applicable solar facility LT breakers
Solar Plant Owned GSU High Tension Circuit Breaker Status (if applicable, project specific)			OPEN/CLOSED

Power Plant Controller Input Points - Analog	Status	Accuracy	Notes
PV Generator Real Power Setpoint	MW	± 2 %	Duke Energy Control Center maximum allowed MW delivery at Point of Interconnection. Normally equal to Interchange Agreement defined rated POI capacity limit unless ECC requires curtailment action at POI. Delivery to plant DNP Client system will be via DNP Server analog input mapped from ECC setpoint in RTAC configuration.
Storage Device Real Power Setpoint	MW	± 2 %	Storage Device Setpoint for Duke Energy Control Center maximum allowed MW delivery at Point of Interconnection. Normally equal to Interchange Agreement defined rated POI capacity limit unless ECC requires curtailment action at POI. Delivery to plant DNP Client system will be via DNP Server analog input mapped from ECC setpoint in RTAC configuration.

Battery Storage Operational Setpoint Mode	Integer		Battery storage Facility Operational Setpoint Mode command from Duke Energy Control Center
---	---------	--	--

For Facilities equipped with Storage Resources the following Power Plant Controller Output Points shall also be reported to Buyer.

Battery Output Points			
Analog	Units of Measure	Accuracy	Notes
Storage Device Active Power Operating (Discharging) High Limit	+MW		Storage Device's Active Power Operating High Limit given current equipment status, equipment status, equipment characteristics, state-of-charge, and current ambient conditions.
Storage Device Active Power Operating (Charging) Low Limit	-MW		Storage Device's Active Power Operating Low Limit given current equipment status, equipment characteristics, state-of-charge, and current ambient conditions.
Number of Storage Device Inverters (or Converters) Ready Status			Sum of the Number of storage device inverters (or converters) currently in service. Can be a decimal if one or more inverters or converters are partially available.
Allowable Depth of Discharge	MWh		MWh energy storage available, considering OEM recommendations and any emergent operating limitations, at a given point in time.
Allowable Depth of Charge	MWh		MWh energy storage potential, considering OEM recommendations and any emergent operating limitations, at a given point in time.
Number of Operational Battery Racks	Count		Sum of battery racks currently available for service.
State of Charge	%		Percentage of the Allowable Depth of Discharge currently charged within the storage device. Example: A nameplate rated 10 MWh storage device is currently allowed to store energy up to 80% of its nameplate rating and down to 20% of its nameplate rating. The storage device currently has 4 MWhs stored in the device. The Allowable Depth of Discharge is 10

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			MWh *80% - 10 MWh * 20% = 6 MWh The State of Charge = 4 MWh / 6 MWh * 66.66%
Max MWh Charge	MWh		Maximum amount of energy currently allowed to be stored in the energy device given current equipment status, equipment characteristics, and current ambient conditions.
Min MWh Charge	MWh		Minimum amount of energy currently allowed to be stored in the energy device given current equipment status, equipment characteristics, and current ambient conditions.
Equivalent calendar year Cycles	Count		Number of Equivalent Cycles since 00:00 on January 1 st of current year
Storage Device Daily Energy Discharge	MWh		An Accumulator datapoint that returns the daily amount of Energy Discharged by the Storage Device since 00:00
Storage Device Daily Energy Charge	MWh		An Accumulator datapoint that returns the daily amount of Energy Charged by the Storage Device since 00:00
Previous Hour Battery Storage MWh Charge Energy	MWh		Previous Hour MWh delivered to Battery Storage System. DC MWh to be used for DC coupled facilities utilizing a common AC inverter for both PV Array and Battery Storage DC power input.
Previous Hour Battery Storage MWh Discharge Energy	MWh		Previous Hour MWh delivered to Transmission Grid. DC MWh to be used for DC coupled facilities utilizing a common AC inverter for both PV Array and Battery Storage DC power input.
Battery Storage Daily Discharge Capacity limit	MWh		Daily Battery Discharge Capacity as specified in manufacturers equipment warranty and/or operational agreements. DC MWh to be used for DC coupled facilities utilizing a common AC inverter for both PV Array and Battery Storage DC power input.
Battery Storage Daily Charge Capacity limit	MWh		Daily Battery Charge Capacity as specified in manufacturers equipment warranty and/or operational agreements. DC MW to be used for DC coupled facilities utilizing a common

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				AC inverter for both PV Array and Battery Storage DC power input.
PV Energy Generation	MWh			An Accumulator datapoint that returns the daily amount of Energy Generated by the Solar Site since 00:00
Storage Device Active Power Setpoint	MW	± 2 %		Storage Device Supervisory Control System Active Power Setpoint
Storage Device Active Power Injection	MW	± 2 %		Instantaneous Active power from the Storage Device exchanged with the Grid measured at the invertors/converters
Storage Device Ramp Rate	MW/min	± 2 %		Storage Device ramp rate set within the plant control system
Solar Active Power Injection	MW	± 2 %		Instantaneous Active power from Solar Generation exchanged with the Grid measured at the invertors
Battery Active Power Injection	MW	± 2 %		Instantaneous Active power from Battery Generation measured at the invertors/convertors
Digital	Status	Accuracy	Notes	
Storage Device Breaker Status	OPEN/CLOSED		Indicates whether the Unit Generator Breaker is Open or Closed.	
Clipped Energy Capture Mode Status	Enable/Disable		Indicates whether the Clipped Energy Capture Mode Status is Enabled or Disabled	
Ramp Dampening Mode Status	Enable/Disable		Indicates whether the Ramp Dampening Mode Status is Enabled or Disabled	
Grid Charging Mode Status	Enable/Disable		Indicates whether the Grid Charging Mode Status is Enabled or Disabled	
Battery Storage Fully Charged Status	TRUE/FALSE		TRUE/FALSE	
Battery Storage Fully Discharged Status	TRUE/FALSE		TRUE/FALSE	

Exhibit J

Storage Operating Procedures⁷⁵

- A. **Storage Facility Operations.** Seller shall comply with the following requirements with respect to the operation of the Storage Facility:
- 1) **Seller's Energy Management System (EMS) SCADA or ("Buyer SCADA")**
 1. **Control Points**
 - a. Grid charging selection mode – the storage facility BESS SCADA shall only allow grid charging when enabled by the Buyer through a control point from the Buyer SCADA
 - b. The BESS SCADA shall receive and follow a setpoint signal derived by the Buyer SCADA
 - 2) **BESS SCADA.** The entire Storage Facility shall be controlled by a BESS SCADA and BESS controller (collectively, "**BESS SCADA**"). The Parties shall cooperate to integrate the systems and controls necessary to implement the Storage Operating Procedures.
 - a. The Storage Facility is to operate without on-site operations personnel on a 24 hour a day, 7 day per week basis. Seller shall ensure design, SCADA, and control systems operate automatically with appropriate industry standards and controls.
 - b. The Storage Facility must meet all NERC and critical infrastructure protection (CIPs) requirements in accordance with **Section 6.9.1(e)**.
 - c. Seller shall provide as part of the Storage Facility a proven and established instrumentation and control system for the BESS.
 - d. Buyer's control system(s) ("**Buyer SCADA**") will monitor and control the BESS SCADA while Seller's BESS SCADA will act as primary controller for the Storage Facility.
 - e. The Buyer SCADA shall be the primary control system for the point of interconnection ("**POI**") breaker.
 - f. Buyer will send a charge/discharge signal, or signals, to the BESS SCADA. Buyer agrees it would limit the number of Cycles to 366 per calendar year.
 - g. Buyer requires reactive power support at all hours of the day (including at night) and the facility will follow a voltage schedule that is locally measured and controlled in accordance with Buyer's Interconnection Procedures.
 - h. Buyer requires Seller's Facility to provide Primary Frequency Response in accordance with Buyer's Interconnection Procedures.
 - i. Facility shall follow external setpoint control(s) for active power as required by Buyer. The facility shall implement local control modes as required by Buyer. These control modes would include, but would not be limited to, Grid Charging Mode, Auto Clipped Energy Capture Mode, and Ramp Dampening Mode.
 - j. Local control modes shall have the functionality of being enabled or disabled via SCADA. The Buyers SCADA shall be the master for enabling or disabling any local control modes.

⁷⁵ **NTD:** Remains subject to further Buyer review.

- k. Ramp dampening shall be implemented by the local controller to manage short duration sudden deviations in active power output. This functionality shall have a locally configurable time constant and active power offset slope set to dampen transient active power deviations primarily related to primary resource intermittency as determined by the Buyer.
 - l. The BESS SCADA will echo the Buyer SCADA setpoint signal acknowledging receipt of the signal.
 - m. BESS SCADA shall communicate with Buyer SCADA via DNP3 protocols. BESS SCADA shall incorporate an RTU or Gateway device, to **which Seller shall provide read/write access to Buyer SCADA via DNP 3.0.**
 - n. The monitoring system shall provide data as described in Section II of this Exhibit J. Seller shall design the system so that the data can be retrieved remotely. The monitoring system shall be configured for automatic reporting of generation statistics required by Buyer.
- 3) BESS Telemetry. Detailed metering, relay, and protection requirements will be specified in the Generation Interconnection Agreement. Seller must provide as part of the Storage Facility telemetry equipment and facilities capable of transmitting information listed in Section II of this Exhibit J, concerning the Storage Facility on both a day-ahead and real-time basis.
1. Such real-time data must be made available to Buyer on the same basis as Seller receives the data.
 2. In the event of loss of communication between Buyer and BESS SCADA system, the BESS SCADA system must institute Buyer's desired behavior in such circumstance, including maintaining the previously communicated operating behavior, accepting a curtailment command from a local terminal, or a safe and linear shutdown.
- 4) Measurement and Verification. As described above, Buyer will have real-time access to view Seller's BESS SCADA system and data historian that will monitor the Storage Facility's state of health metrics as well as usage metrics such as equivalent full Cycles to date. Buyer will be able to monitor the number of Cycles that have occurred over the life of the Storage Facility on a real-time basis.

B. The Power Conversion System (PCS)

The PCS is the interface between the DC battery system and the AC system and provides for charging and discharging of the Storage Facility and may consist of one or more parallel units.

- 1) The Parties agree to mutually cooperate to ensure the PCS shall be a smart inverter and converter. The PCS, in conjunction with the BESS SCADA, shall be capable of complete automatic unattended operation, including electrical self-protection, synchronizing/paralleling with the utility, and disconnect functions.
- 2) The control of the PCS shall be integrated with the overall BESS SCADA. A proven and established combined instrumentation and control system shall be provided for the BESS SCADA. The BESS SCADA system shall communicate with a RTU/Gateway device that shall be the primary interface with Buyer SCADA and shall communicate with Buyer SCADA via DNP3 protocol. The self-protective features shall not allow the PCS to be operated in a manner that may be unsafe or damaging.

- 3) The PCS shall be capable of operating continuously at rated output under the voltage and frequency ranges as specified by equipment manufacturers and as required at the POI by the Generation Interconnection Agreement and providing full output for the required Storage Facility operation modes specified or **UL 1741 certified**.

C. Storage Facility Operation Mode

- 1) The Storage Facility shall be capable of four-quadrant operation on a power capability curve to provide for various operating modes including peak power limiting operations, potential hybrid renewable energy plant Smoothing, charge/discharge operations, VAR support, and other operating modes.

D. Charging and Discharging – Requirements and Limitations

- 1) Seller shall specify charging and discharging requirements and limitations. Seller shall design the Storage Facility to ramp up from zero to the maximum capacity and back at a mutually agreed upon, specified range of Buyer selectable ramp rate(s).
- 2) Seller shall ensure that the BESS SCADA or control system has protective features ensuring that setpoints cannot exceed charge and discharge limits reported by battery management system (BMS) and PCS SCADA systems.
- 3) Automatic or programmed charge Cycles shall be implemented to prevent the state of charge ("SoC") from going above or below the battery vendor specified SoC limits.
- 4) Seller shall indicate any required rest (neither charging nor discharging of the Storage Facility) periods, their duration, and what event they must follow or precede.
- 5) **The maximum rest period allowed (days, weeks, months) is provided in Section II of this Exhibit J**
- 6) The Storage Facility will be charged with Output or Grid Charging as directed by Buyer in the Charging Notice.
- 7) Seller shall be excused from its obligation to charge the Storage Facility in response to an instruction from Buyer, including a Charging Notice, if and to the extent the Generating Facility is not generating Output because of Force Majeure, Planned Outage or Maintenance Outage.
- 8) Seller shall be excused from its obligation to discharge the Storage Facility in response to an instruction from Buyer, including a Discharging Notice, if and to the extent the Storage Facility is not able to discharge because of Force Majeure, Planned Outage or Maintenance Outage.

E. Cooperation

Seller shall design the Facility per the current specification and will cooperate with Buyer to modify the Facility to accommodate technology and market changes if requested.

- 1) Seller and Buyer shall mutually agree on the required modifications, the scope, the timing of such modifications, and the related costs.

F. Reports.

Seller will deliver to Buyer a quarterly written report, produced using format provided by Buyer, highlighting performance from Storage Facility Operating Parameters with

respect to the performance of the Storage Facility, including: 1) impacts to physical availability greater than five percent (5%) of capacity; 2) with respect to throughput, average SoC or physical availability; 3) issues related to the battery management system and PCS; 4) ambient conditions including temperature maximums and minimums; and 5) performance score, if applicable. All timestamps provided in report shall be specified in UTC time format.

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Exhibit K

Storage Energy Capacity Tests; Storage Energy Capacity Guarantee

A. Storage Energy Capacity Test.

1. **Prior to Commercial Operation Date.** Upon no less than ten (10) days prior notice to Buyer, and at any time prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Energy Capacity Test to determine the Storage Energy Capacity Rating of the Storage Facility for the first Contract Year, which must be greater than or equal to the Guaranteed Storage Energy Capacity Rating as measured at the Delivery Point.

2. **Subsequent Testing.** At least once per Contract Year in the month of December, or at such other time during the Contract Year as the Parties may mutually agree, upon no less than five (5) days prior notice to Buyer, Seller shall schedule and complete a Storage Energy Capacity Test. In the event a Storage Energy Capacity Test (the "Initial Test") results in the Facility having a Storage Energy Capacity Rating that is less than the Guaranteed Storage Energy Capacity Rating, Seller shall have the right to conduct a single retest of the Storage Energy Capacity Test within thirty (30) days after the completion of the Initial Test (the "Retest Time Period") upon no less than five (5) days prior written notice to Buyer (the "Capacity Retest"). If the resulting Storage Energy Capacity Rating from the Capacity Retest is less than the Guaranteed Storage Energy Capacity Rating, or the Capacity Retest is not completed within the Retest Time Period, Seller shall: (i) deliver to Buyer a written plan on the maintenance or improvements that it will undertake with respect to the Storage Facility to ensure that the next test is passed at a level equal to or above the Guaranteed Storage Energy Capacity Rating, which plan shall be subject to Buyer's reasonable approval, and (ii) thereafter promptly implement the approved plan. In addition, Buyer shall have the right to require Seller to conduct a Storage Energy Capacity Test, and Seller shall have the right to retest as necessary, at any time upon no less than five (5) days prior written notice to Seller or Buyer, as applicable. Notwithstanding anything to the contrary contained in this Exhibit K, in no event shall Storage Energy Capacity Tests be performed more frequently than monthly.

3. **Witnessing Test; Costs and Expenses.** Buyer shall have the right to send one or more representative(s) to witness all Storage Energy Capacity Tests. Buyer shall be responsible for all costs and expenses payable or reimbursable to its representative(s) witnessing any Storage Energy Capacity Test. All other costs of any Storage Energy Capacity Test shall be borne by Seller (other than any Charging Energy required to perform such Storage Energy Capacity Test).

4. **Test Results.** No later than five (5) days following any Storage Energy Capacity Test, whether test was successfully passed or failed, Seller shall deliver a testing report to Buyer detailing results and findings of the Storage Energy Capacity Test (the "Storage Energy Capacity Testing Report"), including reasonable supporting data. The Storage Energy Capacity Testing Report shall include energy accounting revenue data verifying the operating conditions and output of the Storage Facility. If the actual Storage Energy Capacity Rating determined pursuant to a Capacity Retest (or the Initial Test if the Capacity Retest is not completed within the Retest Time Period) is less than the then current Storage Energy Capacity Rating determined during the previous Storage Energy Capacity Test ("Previous Test"), then the actual Storage Energy Capacity Rating determined pursuant to such Storage Energy Capacity Test shall become the new Storage Energy Capacity Rating at the beginning of the day following the completion of such Initial Test for all purposes under this Agreement until a new Storage Energy Capacity Rating is determined pursuant to a subsequent Storage Energy Capacity Test in accordance with the terms of this Agreement, provided in no event shall the Storage Energy Capacity Rating be greater than the Guaranteed Storage Energy Capacity Rating.

5. Storage Energy Capacity Damages. If Storage Energy Capacity Rating determined following a Capacity Retest (or the Initial Test if the Capacity Retest is not completed within the Retest Time Period) is less than Guaranteed Storage Energy Capacity Rating, then Seller shall be liable to pay Buyer liquidated damages, if greater than zero, ("Storage Energy Capacity Damages") equal to the product of:

a) Fifty percent (50%)

Multiplied by

b) $1 - (\text{new Storage Energy Capacity Rating} / \text{current Storage Energy Capacity Rating})$

Multiplied by

c) The prorated Monthly Capacity Payments from the date of the Previous Test up to and including the date of the Capacity Retest.

6. Invoicing. If Storage Energy Capacity Rating determined as a result of the Storage Energy Capacity Tests is less than the Guaranteed Storage Energy Capacity Rating, then Buyer shall include the Storage Energy Capacity Damages calculated pursuant to Section A.5 of this Exhibit K in the next monthly invoice. The provisions of Section 11.5 shall apply with respect to any dispute between the Parties with respect to the Storage Energy Capacity Testing Report or Buyer's invoice of Storage Energy Capacity Damages.

B. Storage Energy Capacity Test Procedures:

Seller will perform each Storage Energy Capacity Test in the following manner and utilizing the following steps:

1. The Storage Energy Capacity Test can only be performed when the Storage Facility is at the lower of: (i) its maximum State of Charge as defined in the BESS operating manuals or (ii) one-hundred percent (100%) State of Charge prior to the start of the Storage Energy Capacity Test. Further, the Storage Energy Capacity Test shall only be performed when the Generating Facility is offline.
2. Seller will discharge the Storage Facility at the higher of full capacity or the Storage Energy Capacity Rating, over a duration of four (4) consecutive hours.
3. Seller will add the quantity of MWh produced by the Storage Facility during the four (4) consecutive hours at a time step less than or equal to one (1) minute to produce a sum quantity of MWh for the four (4) consecutive hours full discharge of the Storage Facility, measured at the Delivery Point.
4. Seller will divide the sum quantity of MWh produced over the four (4) consecutive hours full discharge of the Storage Facility by a factor of four (4) to produce a value that will become the new Storage Energy Capacity Rating.

Example:

Hour 1 Discharge = 25 MWh

Hour 2 Discharge = 25 MWh

Hour 3 Discharge = 25 MWh

Hour 4 Discharge = 25 MWh
Duration = 4 hour discharge

Storage Energy Capacity = $25 + 25 + 25 + 25 = 100$ MWh
Storage Energy Capacity Rating = $100 \text{ MWh} / 4 \text{ hours} = 25 \text{ MW}$

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Exhibit L

Storage Availability Guarantee

A. Calculation of Peak Months Storage Availability

Within thirty (30) days after the end of each Contract Year, Seller shall calculate the Peak Months Storage Availability of the Storage Facility as follows:

$$\text{Peak Months Storage Availability} = \frac{\text{AH} - \text{TAMOH} - \text{TAPOH}}{\text{AH} - \text{TAPOH}}$$

Where:

"Available Hours" or "AH" means the total number of hours during the Peak Months during such Contract Year

"Equivalent Outage Hour" means, for any Planned Outage or Maintenance Outage, as the case may be, the product of the actual duration of the outage (hours) and the proportion of the nominal output range which cannot be achieved during this period. For example, if the Storage Facility is only fifty (50%) percent available for a period of four (4) hours, then this would equal two (2) Equivalent Outage Hours for the purposes of this calculation.

"Total Annual Maintenance Outage Hours" or "TAMOH" means the sum of the number of Equivalent Outage Hours during which the Storage Facility has experienced a Maintenance Outage during the Peak Months of the applicable Contract Year.

"Total Annual Planned Outage Hours" or "TAPOH" means the sum of the number of Equivalent Outage Hours during which the Storage Facility has experienced a Planned Outage during the Peak Months of the applicable Contract Year.

B. Calculation of Off Peak Months Storage Availability

Within thirty (30) days after the end of each Contract Year, Seller shall calculate the Storage Availability of the Storage Facility as follows:

$$\text{Off Peak Months Storage Availability} = \frac{\text{AH} - \text{TAMOH} - \text{TAPOH}}{\text{AH} - \text{TAPOH}}$$

Where:

"Available Hours" or "AH" means the total number of hours during the Off Peak Months during such Contract Year

"Equivalent Outage Hour" means, for any Planned Outage or Maintenance Outage, as the case may be, the product of the actual duration of the outage (hours) and the proportion of the nominal output range which cannot be achieved during this period. For example, if the Storage Facility is only fifty (50%) percent available for a period of four (4) hours, then this would equal two (2) Equivalent Outage Hours for the purposes of this calculation.

"Total Annual Maintenance Outage Hours" or "TAMOH" means the sum of the number of Equivalent Outage Hours during which the Storage Facility has experienced a Maintenance Outage during the Off Peak Months of the applicable Contract Year.

"Total Annual Planned Outage Hours" or "TAPOH" means the sum of the number of Equivalent Outage Hours during which the Storage Facility has experienced a Planned Outage during the Off Peak Months of the applicable Contract Year.

C. Calculation of Storage Availability Damages

If the Seller fails to maintain (i) a Peak Months Storage Availability of 97% for any Contract Year (or 94% during the first Contract Year), or (ii) an Off Peak Months Storage Availability of 94% for any Contract Year (including the first Contract Year), then Seller shall be liable to pay Buyer the Storage Availability Damages in an amount equal to the percentage of the Monthly Capacity Payments set forth below:

Peak Months Storage Availability

Guaranteed Peak Months Storage Availability %	Actual Availability	Contract Year 1 % of Monthly Capacity Payment to Buyer	Contract Years 2-15 % of Monthly Capacity Payment Payable to Buyer
97% (94% for Contract Year 1)	96.99% - 85.00% (93.99% - 85.00% for Contract Year 1)	One-tenth of one percent (0.001) for each one-tenth of one percent (0.001) by which the Actual Availability falls below 94% but equal to or above 85%	One-tenth of one percent (0.001) for each one-tenth of one percent (0.001) by which the Actual Availability falls below 97% but equal to or above 85%
97%	84.99% - 80.00%	Nine percent (9%) plus two-tenths of one percent (0.002) for each one-tenth of one percent (0.001) by which the Actual Availability falls below 85% but equal to or above 80%	Twelve percent (12%) plus two-tenths of one percent (0.002) for each one-tenth of one percent (0.001) by which the Actual Availability falls below 85% but equal to or above 80%
97%	79.99% - 75.00%	Nineteen percent (19%) plus three-tenths of one percent (0.003) for each one-tenth of one percent (0.001) by which the Actual Availability falls below 80% but equal to or above 75%	Twenty-two percent (22%) plus three-tenths of one percent (0.003) for each one-tenth of one percent (0.001) by which the Actual Availability falls below 80% but equal to or above 75%
97%	74.99% and below	Thirty-four percent (34%) plus four-tenths of one percent (0.004) for each one-tenth of one percent (0.001) by which the Actual Availability falls below 75%	Thirty-seven percent (37%) plus four-tenths of one percent (0.004) for each one-tenth of one percent (0.001) by which the Actual Availability falls below 75%

Off Peak Months Storage Availability

Guaranteed Off Peak Months Storage Availability %	Actual Availability	% of Monthly Capacity Payment Payable to Buyer
94%	93.99% - 85.00%	One-tenth of one percent (0.001) for each one-tenth of one percent (0.001) by which the Actual Availability falls below 94% but equal to or above 85%
94%	84.99% - 80.00%	Nine percent (9%) plus two-tenths of one percent (0.002) for each one-tenth of one percent (0.001) by which the Actual Availability falls below 85% but equal to or above 80%
94%	79.99% - 75.00%	Nineteen percent (19%) plus three-tenths of one percent (0.003) for each one-tenth of one percent (0.001) by which the Actual Availability falls below 80% but equal to or above 75%
94%	74.99% and below	Thirty-four percent (34%) plus four-tenths of one percent (0.004) for each one-tenth of one percent (0.001) by which the Actual Availability falls below 75%

EXAMPLE: The following is an example calculation of the Storage Availability Damages and is included for illustrative purposes only. Assume the Actual Availability for the Peak Months is 82% for the Calendar Year. Peak Months Storage Availability Damages = $[12\% + ((0.85 - 0.82) \times 2)] \times \text{Monthly Capacity Payments}$, a result of $0.18 \times \text{Monthly Capacity Payments}$.

Failure to maintain an availability of 75% in a given Measurement Period will be an Event of Default.

D. Invoicing

Within [] days of the end of such Contract Year, Seller shall deliver to Buyer a statement showing Seller's computation of the Peak Months Storage Availability, the Off Peak Months Storage Availability, and Storage Availability Damages calculated pursuant to Section A and Section B of this Exhibit L. If the Storage Availability for any Contract Year is less than the Guaranteed Storage Availability, then Buyer shall include in the next monthly invoice the amount of damages calculated in Section C of this Exhibit L. The provisions of Section 11.5 shall apply with respect to any dispute between the Parties with respect to Seller's statement of the Storage Availability Damages.

Exhibit M

Guaranteed Storage Round Trip Efficiency

A. Storage Round Trip Efficiency Test.

1. **Prior to Commercial Operation Date.** Seller shall schedule and complete a Storage Round Trip Efficiency Test during the Storage Energy Capacity Test to verify that the Storage Facility can satisfy the Guaranteed Storage Round Trip Efficiency.

2. **Subsequent Testing.** Buyer and Seller shall have the right to require a retest of the Storage Round Trip Efficiency during a Storage Energy Capacity Test.

3. **Test Results.** For the purposes of the Storage Round Trip Efficiency Test, the charging Cycle shall begin when the Storage Facility is at the greater of (i) zero percent (0%) or (ii) the minimum State of Charge as defined in the BESS operating manuals prior to the commencement of the Storage Energy Capacity Test and the Charging Energy is the amount of energy imported from the grid, as measured at the Delivery Point, that brings the Storage Facility to the lessor of (i) one-hundred percent (100%) of (ii) the maximum State of Charge as defined in the BESS operating manuals. No later than five (5) days following any Storage Round Trip Efficiency Test, whether test was successfully passed or failed, Seller shall deliver a testing report to Buyer detailing results and findings of the Storage Round Trip Efficiency Test (the "**Storage Round Trip Efficiency Testing Report**"), including data showing Charging Energy and Discharging Energy during the Storage Round Trip Efficiency Test and other reasonable supporting data.

4. **Failed Storage Round Trip Efficiency test.** If Storage Round Trip Efficiency determined as a result of the Storage Round Trip Efficiency Test is less than 80%, then Seller shall have sixty (60) days in which to conduct such maintenance or improvements with respect to the Storage Facility and to conduct another Storage Round Trip Efficiency Test to ensure that it satisfies the Storage Round Trip Efficiency criteria specified in **Exhibit J**. If Seller fails to demonstrate pursuant to a Storage Round Trip Efficiency Test that the Storage Facility satisfies the criteria specified in **Exhibit J** within such sixty (60)-day period, then it shall be an Event of Default by Seller.

5. **Storage Round Trip Efficiency.** Storage Round Trip Efficiency shall be calculated as follows:

$$RTE_{Actual} = \frac{Energy_{Out} + Aux_{Discharge}}{Energy_{In} - Aux_{Charge}}$$

Where:

"EnergyIn" means the actual amount of energy from the grid used to charge the Storage Facility, measured at the Delivery Point

"EnergyOut" means the actual amount of energy provided from the Storage Facility, measured at the Delivery Point

"AuxDischarge": Auxiliary load consumed by facility while providing EnergyOut

"AuxCharge": Auxiliary load consumed by the facility while consuming EnergyIn

Exhibit N

Storage Ramp Rate Test

A. Storage Ramp Rate Test.

1. **Storage Ramp Rate Testing.** Upon no less than five (5) days prior notice to Buyer, and at any time prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Ramp Rate Test to verify that the Storage Facility can satisfy the Storage Ramp Rate criteria. Thereafter, the Storage Ramp Rate Test will be performed on an ongoing basis by the Buyer as described under Section B of this Exhibit.

2. **Failed Storage Ramp Rate Test.** If the actual Storage Ramp Rate is more than ten (10) percentage points from the Storage Ramp Rate specified in this Exhibit J, then Buyer shall provide Seller a testing report detailing results and findings of the Storage Ramp Rate Test (the "Storage Ramp Rate Testing Report"), including reasonable supporting data. Seller shall then have sixty (60) days in which to conduct such maintenance or improvements with respect to the Storage Facility and to conduct another Storage Ramp Rate Test to ensure that it satisfies the Storage Ramp Rate criteria specified in Exhibit J. If Seller fails to demonstrate pursuant to a Storage Ramp Rate Test that the Storage Facility satisfies the criteria specified in Exhibit J within such sixty (60)-day period, then it shall be an Event of Default by Seller.

B. Storage Ramp Rate shall be calculated as follows:

$$\text{Ramp Rate} = \frac{\frac{MW_A - MW_B}{TE_{MW}} - \frac{SP_A - SP_B}{TE_{SP}}}{\frac{SP_A - SP_B}{TE_{SP}}}$$

Where:

"MW_A": Active power for 20 seconds prior to setpoint change

"MW_B": Active power for 20 seconds after new setpoint change feedback has been received

"TE_{MW}": Time Elapsed between active power change

"TE_{SP}": Time Elapsed between active power setpoint change

"SP_A": Active power setpoint for 20 seconds prior to setpoint change

"SP_B": Active power setpoint for 20 seconds after new setpoint change

Attachment 5

2024 Solar Procurement Pre-Proposal Stakeholder Engagement Process Meetings Materials

**Duke Energy Carolinas, LLC
Duke Energy Progress, LLC
Docket No. E-2 Sub 1340
Docket No. E-7 Sub 1310**

2024 Carolinas Solar RFP Stakeholder Meeting 1

JANUARY 30, 2024

Safety Moment

- **February is American Heart Month-** a federally designated occasion where Americans are asked to focus on their heart health.
- Heart disease is a leading cause of death in the US.
- In many cases, risk of heart disease can be mitigated when healthy habits are adopted such as not smoking, maintaining healthy weight, controlling blood sugar and cholesterol, treating high blood pressure, getting at least 150 minutes of moderate-intensity physical activity a week, and getting regular checkups.

Agenda

- Commission Updates
 - Ongoing Solar Procurement Docket in SC
 - Directives for 2024 Solar Procurement from the NC Carbon Plan Order
- Using a Resource Solicitation Cluster (RSC) for the RFP
- RFP Terms and Conditions
- Evaluation Details: RZEP Shadow Cost and Volume Adjustment Mechanism
- Timelines

SC Renewable Energy Procurement Docket Update

- Act 62 authorizes CPRE procurements across utility balancing areas, and 2024 RFP is a system-wide procurement to serve customers in both states.
- On January 25, 2024, the PSCSC issued a directive in Docket Nos. 2022-239-E and 2022-240-E approving a Comprehensive Settlement Agreement, that (1) Duke's system-wide CPRE Program framework is reasonable and resulted in a fair, open, transparent, and non-discriminatory 2022 solar procurement and (2) system-wide 2022 RFP was reasonable step for Duke to take towards procuring renewable generation. A full order addressing the PSCSC's findings and conclusions of law is forthcoming.
- PSC has also approved use of a Resource Solicitation Cluster for 2023 RFP

Directives from NC Carbon Plan Order

- Approves “all of the above plan” including selecting solar and storage resources for procurement in 2023-2024
 - Identifies need for 2,350 MW of new solar and 600 MW paired storage to be procured in 2023-2024 for DEC and DEP
 - NCUC approved 1435 MW solar and 260 MW storage for the 2023 RFP
- Directs 2024 Solar Procurement Proposal filing by Feb. 15, 2024
 - In 2023, the Companies filed prior to this date to request use of a Resource Solicitation Cluster and an alternative timeline, with the RFP draft documents filed in April.
 - For the 2024 RFP, the Companies intend to take the same approach targeting final RFP documents in June and bid window opening in August.

Interconnection Planning for 2024 RSC

DISIS Alignment Lessons Learned

- Using the Resource Solicitation Cluster (RSC) process for interconnection cost estimates has been a better approach from what we know in the 2023 RFP thus far.
 - If the actual quantity that will be selected in the RFP is far less than the quantity studied, then the study is producing cost estimates that are not representative of a realistic scenario.
 - The 2023 RFP had ~ 5,900 MW of solar proposals and a target of 1,435 MW.
 - Approximately twice the procurement target quantity is in the 2023 RSC Phase 1 study.
- Duke continues to believe utilizing a separate RSC for RFP bid evaluation is the optimal study approach and reduces restudy risk of aligning with the 2023 DISIS.
 - The interconnection procedures allow for a Resource Solicitation Cluster for an active RFP (LGIP 10.2; NCIP 4.4.2; SCGIP App Duke CS 5.3.2).
 - An RSC and the updated bidding structure leads to greater efficiency and better allows Duke control for quantity of projects studied in Phase 2 and more effectively manage the risk of a “Phase 3” restudy.
- **NCUC Feb. filing will include a request to use RSC, and the Companies also plan to seek any required authorizations to use RSC for SC-sited projects prior to issuing RFP.**

RFP Terms and Conditions

Quantities and Need

- The 2022 CIPRP approved 2,350 solar and 600 MW of paired storage, and the 2023 RFP is expected to account for 1,000 MW of that solar and 260 MW of that storage.
- The 2024 RFP has at least 1,350 MW of solar and 340 MW of storage to procure. Due to the in-flight IRP needs and supplemental IRP filing (1/31/24), the Companies plan to target 1,585 MW of solar and 400 MW of paired storage.
 - 535 MW solar-only, 1,050 MW solar paired with ~400 MW SPS
- Facility characteristics:
 - The storage portion of the facility will be required to provide a 4-hour duration.
 - The storage capacity will remain 35-40% of the facility's maximum allowable export.
 - 365 cycles/year.
 - Duke will provide dispatch instruction to the facility on when to charge and discharge and must have real-time visibility to both solar production data and storage state of charge.
 - Charging of storage will be primarily from the co-located solar, however the ability to grid charge is required as part of the facility design.

RFP Targets and Rules

- Many similar parameters to 2023 SP RFP:
 - RFP will have an Independent Evaluator, Charles River Associates
 - Joint System-Wide Procurement open to directly-interconnected projects in both NC and SC
 - Transmission-connected in DEC or DEP
 - Balanced portfolio of UOT (~870 MW) and PPA (~715 MW)
 - Assuming 2022 and 2023 RFPs are collectively 55% / 45%
 - 300 MW minimum in both DEC and DEP
 - Market depth adjustments will stay the same
 - Qualitative point deduction for projects that previously terminated/declined a winning offer
 - Step 2 bid refresh in the downward direction included
 - Grid locational guidance identifying transmission constraints
 - Solar-only AND SPS bid is required
 - Storage may only be AC-connected
 - Minimum size – 40 MW, with preference for larger projects

Two Tracks for Proposals

- Utility Ownership Track ("UOT")
 - RFP UOT will have required design criteria and approved vendors, as before
 - Self-developed resources can participate
 - Will accept Asset Transfer-only, and Build-own-transfer proposals
- Controllable PPA Track
 - Solar-only PPA would look very similar to 2023 RFP 25-year contract term
 - SPS PPA would look very similar to 2023 RFP 15-year contract term
 - Fixed rate energy payment (\$25/MWh) and fixed rate capacity payment (\$/MW-month as bid)
 - Performance requirements must be achieved to receive the full capacity payment
 - Proposals must be a Qualifying Facility
 - All PPAs would utilize the “Part B” / “Part D” bid price adder
 - Request for stakeholder feedback regarding PPA price adjustment mechanism based on clear market indices

Evaluation Details

Volume Adjustment Mechanism

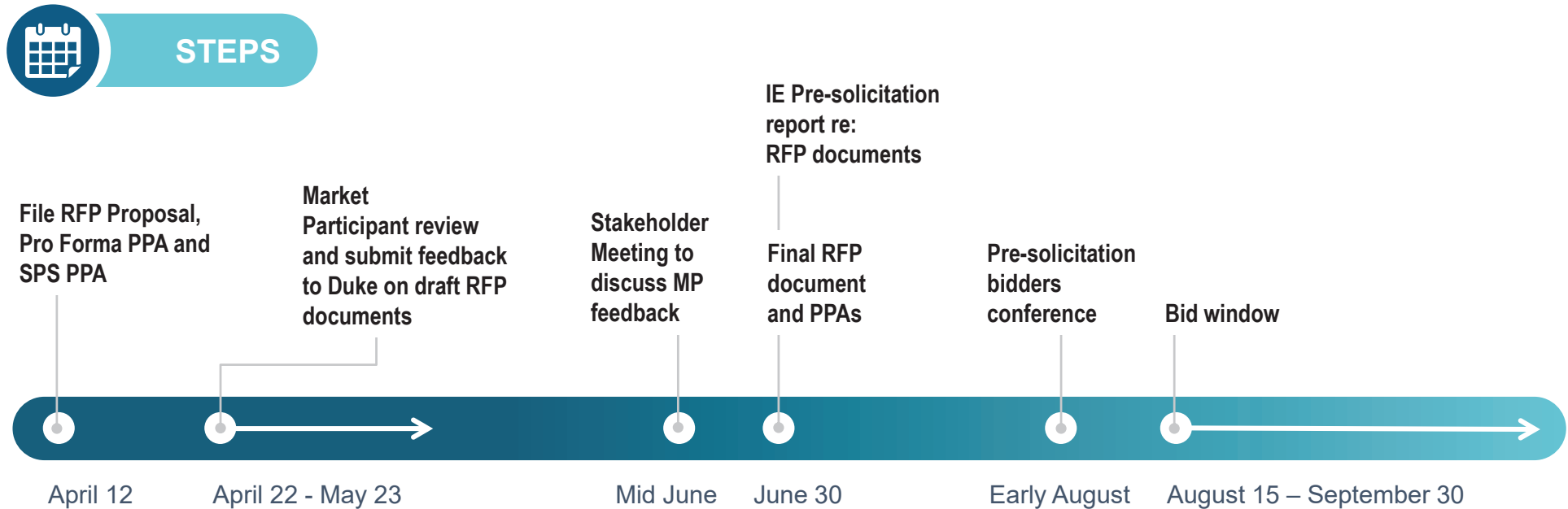
- The concept of the VAM is to protect customers from a hard and fast target to be procured at any cost.
- Increasing the target from 1435 to 1585 MW of solar and from 340 to 400 MW of paired storage has essentially embedded the upside "VAM" in the target quantity (of + ~10% of total target)
- NC storage market is nascent and the 2023 RFP saw a very wide range of storage bids
- Proposed VAM would potentially shift some SPS to solar-only: if the weighted average cost of the SPS is greater than or equal to 110% of the SPS Reference Cost, up to 20% of the SPS target volume may shift to solar-only.
- In 2022 SP, VAM was not triggered.

RZEP “cost allocation” for RFP evaluation

- RZEP “shadow cost” allocation was required in 2023 RFP by NCUC.
- In April 6, 2023 filing the Companies stated RZEP “shadow cost” should not be used for future procurements.
 - Allocating an RZEP “shadow cost” has the potential to increase procurement cost for customers and could result in non-IRP selected resources taking advantage of these investments in a way that provides less benefits for retail/native load customers.
 - RZEP projects approved by the Carolinas Transmission Planning Collaborative are classified as “contingent facilities” and costs for these facilities will not be assigned to Interconnection Customers coming out of the 2022, 2023, or 2024 DISIS ahead of the planned 2024 RFP RSC.
 - This could result in non-IRP-selected Interconnection Customers obtaining the benefit of the new transmission capacity created by RZEP ahead of the 2024 RFP proposals.
- The Companies do not plan to impose an RZEP “shadow cost” in the 2024 RFP.

Timelines

2024 RFP Milestones up to Bid Window



STEPS

2024

- Early Oct. Bid cure period
- Mid Oct. – Dec. Customer Engagement Window for RSC

2025

- Late Oct. – Early Jan. Step 1 RFP Evaluation (without System Upgrades)
- Early Jan. Select "Short List" to be invited to Step 2 RFP
- Jan. Short List posts proposal security due 10 business days after invitation
- Feb. – Apr. RSC Phase 1 study of short list and bid refresh
- Mid-May Announce winners
- Mid-May – Mid-Jun. RSC Customer Engagement Window
- Execute contracts and LOIs

2026

- Mid-Jun – Mid-Dec RSC Customer Engagement Window
- Mid-Dec. – Mid-May RSC Facilities Study
- Summer Execute IAs

Next Steps

- Stakeholders may provide written feedback to the IE at DukeEnergyRFPCarolinas@crai.com
- NCUC Compliance Filing requesting to open new 2024 RFP dockets and seeking approval of RSC targeted for February 5, 2024
- Next stakeholder meeting targeted for late February/early March

2024 Carolinas Solar RFP Stakeholder Meeting 2

MARCH 14, 2024

Safety Moment- Spring Cleaning Tips

- **Ladder Safety-** Always be sure ladders are placed on a firm, level surface. Never use ladders on ground or flooring that is soft, wet or uneven.
- **Gardening Safety-** Read labels on gardening and cleaning products for proper use, and wear protective clothing when necessary.
- **Mowing Safety-** Remove stones, toys and other objects from the lawn before mowing.

Agenda

- Commission Updates
 - Order issued in SC Solar Procurement Docket
 - Directives for 2024 Solar Procurement from the NC Carbon Plan Order
- RFP Terms and Conditions
- Stakeholder Feedback
- Evaluation Details: Volume Adjustment Mechanism and RZEP Shadow Cost
- Timelines

SC Renewable Energy Procurement Docket Update

- Act 62 authorizes CPRE procurements across utility balancing areas, and the 2024 RFP is a system-wide procurement to serve customers in both states.
- On February 22, 2024, the PSCSC issued Order No. 2024-141 in Docket Nos. 2022-239-E and 2022-240-E, which approved the parties' Comprehensive Settlement Agreement.
- In Order No. 2024-141 the Commission concluded that:
 - It is in the public interest for the Companies to develop and establish a CPRE program in the Companies' respective balancing authority area; and
 - Implementation of a CPRE program will ensure that the Companies are able to procure identified needed additional resources in a cost-effective and non-discriminatory fashion, thus furthering the economic operation, reliability, and sustainability of the electric grid within the Companies' balancing authorities.
- PSC has also accepted the Companies' use of a Resource Solicitation Cluster for 2023 RFP.

Directives from NC Carbon Plan Order

- Approves “all of the above plan” including selecting solar and storage resources for procurement in 2023-2024
 - Identifies need for 2,350 MW of new solar and 600 MW paired storage to be procured in 2023-2024 for DEC and DEP
 - NCUC approved 1435 MW solar and 260 MW storage for the 2023 RFP
- Waiting to hear from NCUC about use of a Resource Solicitation Cluster, RZEP shadow cost, and 2024 RFP timeline
 - The Companies filed a motion 2/5/24
 - NCUC released Order Initiating Proceeding (establishing Docket No. E-2, Sub 1340 and E-7, Sub 1310)
 - Public Staff and Intervenor comments were filed 2/15/24
 - Reply comments were filed 2/20/24

RFP Terms and Conditions

Quantities and Need

- The 2022 CIPRP approved 2,350 solar and 600 MW of paired storage, and the 2023 RFP is expected to account for 1,000 MW of that solar and 260 MW of that storage.
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 - Balanced portfolio of UOT (~870 MW) and PPA (~715 MW)
 - Assuming 2022 and 2023 RFPs are collectively 55% / 45%
 - 400 MW minimum in both DEC and DEP
 - Market depth adjustments will stay the same
 - Qualitative point deduction for projects that previously terminated/declined a winning offer
 - Step 2 bid refresh in the downward direction included
 - Grid locational guidance identifying transmission constraints
 - Solar-only bid is required, SPS bid will remain optional
 - Storage may only be AC-connected
 - Minimum size – 20 MW in DEC, 40 MW in DEP
 - Facilities with CODs projected after 11/30/2029 may not be selected as winners.

Two Tracks for Proposals

- Utility Ownership Track ("UOT")
 - Utility-developed resources can participate
 - Will accept Asset Transfer-only, and Build-Own-Transfer proposals
 - RFP UOT will have required design criteria and approved vendors, as before
 - Solar-only Asset Transfer projects should have the same development costs if that facility adds storage, so those Asset Transfer prices would be the same for solar-only and SPS
- Controllable PPA Track
 - Solar-only PPA would look very similar to 2023 RFP 25-year contract term
 - SPS PPA would look very similar to 2023 RFP 15-year contract term
 - Fixed rate energy payment (\$25/MWh) and fixed rate capacity payment (\$/MW-month as bid)
 - Performance requirements must be achieved to receive the full capacity payment
 - Proposals must be a Qualifying Facility
 - All PPA Track Proposals would utilize the "Part B" / "Part D" bid price adder

CCEBA Feedback on PPAs

- Increasing PPA payments to mitigate increased carrying costs for network upgrades
 - The “number of millions of dollars of network upgrades” that are applied to the Part B/D adjustment could include the interest of the network upgrade payment, if that is a significant time gap from the RFP's planned online date
 - Those carrying costs would be a proxy of the interest accrued over that time, and could be the lesser of 5% or Treasury bond + 2% for the period of time from a year past the RFP expected online date (a year after 11/30/29) to COD.
 - This payment is an alternative to provisional service (covered on the next slide)
- Changing economic curtailment cap
 - This is already well-established and the overwhelming proportion of solar in DEP makes the curtailment needs of each system different.
 - When the companies merge, it will likely make sense to have the same curtailment rights everywhere. DEC/DEP propose to address this in the 2025 RFP when we have time to study what the recommended combined-system economic curtailment amount would be and we are a year closer to the merger and more confident it will be completed by 2027.
- Financial security – DEC/DEP require a Letter of Credit or cash
 - Both for PPA security and for IA network upgrade security
 - This is a difficult area to relax because surety bonds are riskier and less liquid. Given the track record of projects cancelling, we need a more liquid form of security.
 - However, by addressing the longer duration network upgrades, we can still address/reduce this problem.

CCEBA Feedback to Shorten Long Duration Upgrades

- DEC/DEP are pre-ordering equipment and scrutinizing timelines and outage schedules to get upgrades completed faster.
 - Outage coordination is the primary bottleneck at this time.
 - Engineering and Procurement agreements will not get projects online faster; the equipment is already being ordered.
 - Grid Enhancing Technologies are already being evaluated for use in interconnection and have been implemented where they are the best solution.
 - 2022 DISIS Phase 3 results had eleven 100kV and 230kV line upgrades: three solutions were switchable reactors and three were reconductoring using High Temp Low Sag Aluminum conductor steel supported/trapezoidal wire conductor in lieu of traditional ACSR conductor.
 - The Companies have utilized phase shifting transformers, switchable reactors, and remedial action schemes as alternatives to reconductoring or constructing new upgrades.
- DEC/DEP might allow customers to pay acceleration charges, where feasible (and good utility practice).
 - However, for shared network upgrade costs ALL interconnecting customers would have to be willing to pay the acceleration cost (or one project could choose to bear the entire cost).
 - No opportunities have yet been identified in which paying more will get the project online faster.
- Extending outage season would decrease system reliability (taking more outages at times of high load).
 - However, the Companies are seeking out opportunities for short-duration work that can be quickly re-connected to occur during seasons that were historically off-limits, subject to good utility practice.

CCEBA Feedback Regarding Long Duration Upgrades

- Provisional Interconnection service
 - Currently only exists in the FERC LGIP/LGIA, but the Companies are looking into adding it to State procedures.
 - Requires some further review/study to determine if a resource can safely come online before their network upgrades are all complete; gets evaluated on an annual basis, consistent with FERC language.
 - Service allowed under “provisional” is akin to temporary “non-firm service”, which does not guarantee full deliverability.
 - This follows CCEBA's suggestion to “connect with ERIS, then NRIS”.
 - CCEBA'S suggestion of partial NRIS and the rest ERIS is not allowed under FERC
 - State generators don't have ERIS or NRIS; Under state jurisdiction, Duke is the offtaker, and so the state study assures that the power can flow to Duke's load. The Companies are still looking into if/how this concept would translate to state projects. It seems this would require both an NRIS study and ERIS study for each project, moving us back to the quagmire of a serial process.
- What PPA changes would be needed during provisional?
 - The non-firm study will evaluate the provisional service under P0, P1, and P2-1 category events.
 - While the Companies cannot guarantee limits on curtailment, past data on the frequency of these contingency events may be provided. What data is provided to finance projects in ERCOT, since they only have ERIS service?
- Avoid selecting projects with long duration upgrades.
 - The Companies are not required to select any project as a winner that has an online date after 11/30/2029.

Evaluation Details

Volume Adjustment Mechanism

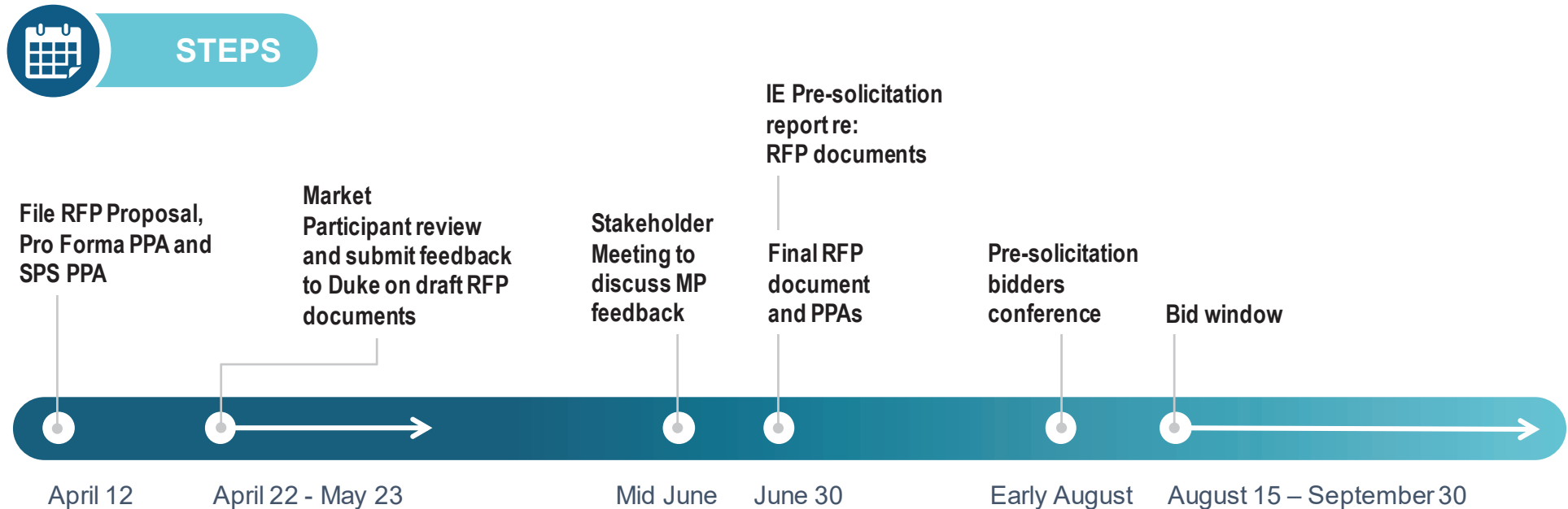
- The concept of the VAM is to protect customers from a hard and fast target to be procured at any cost.
- Updated proposed VAM would function like the 2023 RFP VAM
 - Asymmetric VAM “test” to determine if upward or downward adjustment is warranted
 - 5% decrease to trigger increased volume, but 10% increase to trigger decreased volume
 - The volume of the shift up or down would be 10% of overall procurement target of 1,585 MW (so, ~160 MW) and would be solar-only.
- In 2022 SP, VAM was not triggered.

RZEP “cost allocation” for RFP evaluation

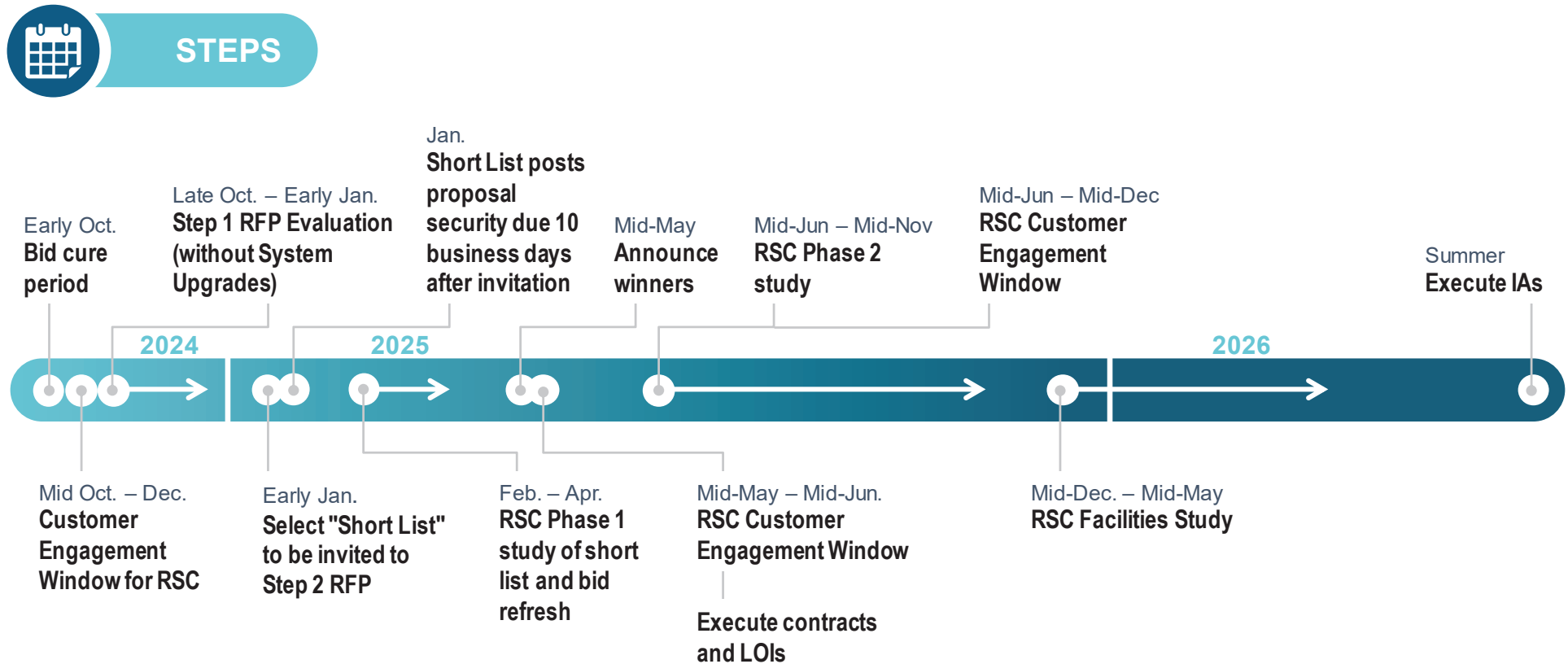
- We are waiting for NCUC feedback on the RZEP “shadow cost” for 2024.
 - RZEP “shadow cost” allocation was required in 2023 RFP by NCUC.
- In April 6, 2023 filing the Companies stated RZEP “shadow cost” should not be used for future procurements.
 - Allocating an RZEP “shadow cost” has the potential to increase procurement cost for customers and could result in non-IRP selected resources taking advantage of these investments in a way that provides less benefits for retail/native load customers.
 - RZEP projects approved by the Carolinas Transmission Planning Collaborative are classified as “contingent facilities” and costs for these facilities will not be assigned to Interconnection Customers coming out of the 2022, 2023, or 2024 DISIS ahead of the planned 2024 RFP RSC.
 - This could result in non-IRP-selected Interconnection Customers obtaining the benefit of the new transmission capacity created by RZEP ahead of the 2024 RFP proposals.
- Subject to receiving regulatory guidance on the issue, the Companies do not plan to impose an RZEP “shadow cost” in the 2024 RFP.

Timelines

2024 RFP Milestones up to Bid Window



Timeline After 2024 RFP Bid Window Closes



Next Steps

- Stakeholders may provide written feedback to the IE at DukeEnergyRFPCarolinas@crai.com (preferably by April 1 to be considered before the filing)
- Subject to regulatory guidance, the Companies will file an RFP proposal April 12, 2024.
- Draft documents to be posted late April for 30 days of stakeholder review

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing 2024 Solar Procurement Request for Proposals to Procure New Solar and Solar Paired with Storage Resources as filed in Docket Nos. E-2, Sub 1340 and E-7, Sub 1310, were served electronically or via U.S. mail, first-class, postage prepaid, upon all parties of record.

This, the 12th day of April, 2024.

/s/E. Brett Breitschwerdt
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