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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: 2022 Solar Procurement Program Final RFP and pro forma PPA
Compliance Filing
Docket Nos. E-2, Sub 1297 and E-7, Sub 1268**

Dear Ms. Dunston:

As directed by the North Carolina Utilities Commission's ("Commission") June 10, 2022, *Order Approving Request for Proposals and Pro Forma Power Purchase Agreement Subject to Amendment* ("June 10 Order") and July 17, 2022 *Order Accepting Withdrawal of Motion for Reconsideration* ("July 17 Order"), Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP" and together with DEC, "Duke Energy" or the "Companies") hereby submit this compliance filing to the Commission providing the final 2022 Solar Procurement Program ("2022 SP Program" or the "Program") request for proposal ("RFP") and pro forma controllable power purchase agreement ("PPA").

As authorized by the June 10 Order and June 17 Order, the Companies now plan to open the 2022 SP Program RFP to bids at noon on Monday, June 20, pending any further Order of the Commission. The Companies are also extending the bid window closing date to July 22, 2022.

Final RFP and Pro Forma PPA

The June 10 Order initially approved the 2022 SP Program RFP and pro forma Controllable PPA subject to two amendments requiring (i) separation of the Duke Utility Ownership Team personnel from the Duke Evaluation Team personnel to address bidder concerns regarding the perception of potential unfair competitive advantage resulting from the Utility Ownership Team's access to Utility Ownership Track Proposal pricing information at the time of the Step 2 bid refresh; and (ii) ensuring RFP administrative costs to be recovered from customers are reasonable by, in part, amending the RFP and pro forma

PPA to provide that in the event the Commission is required to adjudicate any disputes related to the 2022 Solar Procurement, and the 2022 SP Program Independent Evaluator, Charles River Associates' ("IE") fees and costs exceed program fees collected from market participants, that the non-prevailing party shall be responsible for all excess dispute-related fees and costs incurred by the IE.

Section V.D of the RFP has been amended to address the separation requirements in the June 10 Order and now provides that (i) Utility Ownership Team members will not be involved in or responsible for the economic evaluation of any Proposals (which will be performed by the IE and the Duke Evaluation Team); and (ii) a separate Utility Bid Refresh Sub-Team has been established that will solely be responsible for the Step 2 bid refresh for any Utility Self-Developed Proposals and Asset Transfer-only bids acceptable to Duke Energy submitted into the RFP. Once Utility Self-Developed Proposals and Asset Transfer-only Proposals are submitted into the RFP, the Utility Bid Refresh Sub-Team shall maintain separation from the Utility Ownership Team and not have access to any Asset Transfer Plus EPC or Build-Own-Transfer Proposal information until after the RFP winners are announced. All members of the Utility Ownership Team, Utility Bid Refresh Sub-Team and the Evaluation Team will be identified in writing to the IE before the close of the bid window. All Duke Evaluation Team, Utility Ownership Team, and Utility Bid Refresh Sub-Team members are also required to execute acknowledgements prior to the close of the bid window regarding compliance with these separation requirements during the RFP, which will be provided to the IE. If a Utility Self-Developed Proposal or Asset Transfer-only bid is selected as a winner in the RFP, all Utility Ownership Team members and Utility Bid Refresh Sub-Team members shall also execute acknowledgements regarding compliance with the separation requirements.

Section IX of the RFP has been amended to acknowledge the Commission's directive to establish cost responsibility for any potentially excess IE fees relating to a potential future dispute. This language has also been added to Section 26.1 of the pro forma Controllable PPA.

The Companies have also made certain other ministerial changes to the RFP as well as incorporated a clarifying new Section 19.20 to the Controllable PPA providing that the Seller may not add an energy storage device to the Facility without obtaining Buyer's prior written consent.

The 2022 SP RFP is enclosed as Attachment A and the pro forma Controllable PPA is enclosed as Attachment B. The Companies are also providing redlines comparing these final documents to the prior versions filed with the Commission on June 1, 2022.

Directive Regarding Red Zone Transmission Expansion Plan Projects

Based on limited comments filed by the Companies, the Public Staff, and Clean Power Suppliers Association/Carolinas Clean Energy Business Association, the Commission determined in its June 10 Order that it is premature to include certain proactive Red Zone Transmission Expansion Plan ("RZEP") projects being considered through the Federal Energy Regulatory Commission ("FERC")-approved North Carolina

Transmission Planning Collaborative¹ (“NCTPC”) local transmission planning process in the 2022 Definitive Interconnection System Impact Study (“DISIS”) Cluster Study baseline and specifically directed Duke Energy not to include the RZEP projects in the DISIS baseline. June 10 Order, at 7-8.

As an initial matter, the Companies have made minor modifications to the RFP (Section VIII.B.) to reflect this directive. As explained in the RFP, current grid locational guidance identifies known transmission constraints based upon recent transmission system impact studies. The RFP also identifies that the NCTPC is currently evaluating the RZEP projects, which could ultimately result in changes to the areas currently identified as “red zones” and impact the assigned costs to future generator interconnections. To promote transparency for all market participants and in response to market participant feedback during the 2022 SP Program pre-issuance stakeholder process, the RFP also advises that stakeholder input is being solicited through the NCTPC Transmission Advisory Group (“TAG”) and market participants can obtain additional information by participating in the TAG process. The Companies also highlighted that additional information can be obtained on Duke Energy’s transmission planning process and future plans to transform the DEC and DEP transmission systems can be obtained on the Companies’ OASIS websites or by reviewing Duke Energy’s May 16, 2022, Carolinas Carbon Plan, as filed with the Commission.

The Companies recognize the Commission’s important role in reviewing and approving the Carolinas Carbon Plan under Session Law 2021-165 and executing the public policy requirements identified therein. In parallel with meeting their regulatory obligations to develop the Carbon Plan with the Commission under HB 951, the Companies must also meet their obligations under Attachment N-1 of the Joint Open Access Transmission Tariff (“OATT”) to participate in the NCTPC and to determine through that stakeholder-informed process whether transmission expansion projects are needed to ensure transmission system reliability, integrate new generation resources and loads, and/or achieve public policy based on state law or regulatory decisions informing such needs for new transmission projects in the Companies’ balancing authority areas. *See* OATT Attachment N-1, at 4.1. In accordance with the annual transmission planning process established by Attachment N-1, Section 5, the NCTPC is hosting the next Transmission Advisory Group meeting on June 27, 2022, to receive stakeholder feedback on potential transmission projects identified as needed through the ongoing planning process, which will include stakeholder consideration of the RZEP projects. Interested persons can request to participate as a TAG stakeholder by contacting NCTPC facilitator, Mr. Rich Wodyka, at rich.wodyka@gmail.com.

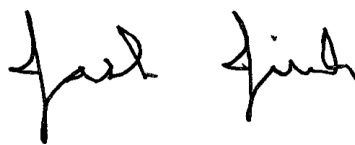
The June 10 Order highlights the Commission’s clear expectation that further due diligence by the Public Staff and more detailed support from the Companies and potentially other parties is needed to evaluate the RZEP projects, and additional explanation from the Companies as to why they are recommending NCTPC approval of such projects in advance

¹ Available at: www.nctpc.org/nctpc/home.jsp.

of the Commission's approval of the Carbon Plan.² The Companies initially plan to provide such information through the FERC-approved NCTPC TAG process. At the appropriate time, the Companies also plan to provide more detailed evidence in the Carbon Plan proceeding on the need for the RZEP projects as relevant to the Companies' long-term resource planning reflected in the Carbon Plan, as the Commission encouraged in the June 10 Order.

If you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack E. Jirak", written in a cursive style.

Jack E. Jirak

cc: Parties of Record

² The June 10 Order “determine[d] that Duke’s mere assertion in this proceeding that the RZEP projects are necessary for the Carbon Plan is insufficient to support its proposal.” The Companies did not intend to propose approval of the RZEP projects or transmission plans in this 2022 SP Program proceeding, and continue to support the NCTPC as the appropriate forum for transmission planning in North Carolina and South Carolina. Additionally, HB 951, Section 2.(c) does not provide any direction relating to transmission planning for purposes of a Commission determination that a 2022 Solar Procurement is needed to meet the resource planning objectives presented in the Carbon Plan. The Companies do, however, recognize the Commission’s crucial role in coordinated transmission planning as part of the State’s overall integrated resource planning process, as well as the Commission’s responsibility to take all reasonable steps to achieve HB 951’s carbon emissions reductions policy requirements. To that end, the Carbon Plan provided detailed explanation of the Companies’ transmission planning process and identified the need for the RZEP projects in Appendix P (Transmission System Planning and Grid Transformation), as well as expressly seeks Commission acknowledgement of the public policy need for future transmission needs to reliably implement the Carbon Plan through the North Carolina Transmission Planning Collaborative and other appropriate forums. *See* Carolinas Carbon Plan, Executive Summary, at 29, Appendix P, at 4-15, Docket No. E-100, Sub 179 (filed May 16, 2022).

Docket No. E-2, Sub 1297
Docket No. E-7, Sub 1268

ATTACHMENT A

**Redline and Clean Versions of
the
2022 Solar Procurement
Request for Proposals for New
Solar Resources**

Docket No. E-2, Sub 1297
Docket No. E-7, Sub 1268

Clean Version
of the
2022 Solar Procurement
Request for Proposals
for
New Solar Resources

DUKE ENERGY CAROLINAS, LLC
DUKE ENERGY PROGRESS, LLC

**2022 SOLAR
PROCUREMENT PROGRAM**

Request for Proposals for New Solar Resources

Dated: 6/20/2022
Proposals Due: 07/22/2022

TABLE OF CONTENTS

	Page
I. PROGRAM OVERVIEW	1
II. SOLAR RESOURCES TO BE PROCURED IN 2022 SP PROGRAM	1
A. FACILITY REQUIREMENTS	3
III. PROPOSAL TRACKS	4
A. UTILITY OWNERSHIP TRACK PROPOSALS	5
B. CONTROLLABLE PPA TRACK PROPOSALS	6
IV. RFP PROCESS	7
A. INDEPENDENT EVALUATOR	7
B. RFP ACCESS AND INSTRUCTIONS	8
C. 2022 SP PROGRAM RFP SCHEDULE	8
D. UTILITY OWNERSHIP TEAM AND BID REFRESH SUB-TEAM SEPARATION	9
E. CONFIDENTIALITY	11
F. PROPOSAL SIZE FLEXIBILITY	11
G. MARKET PARTICIPANTS AND PROPOSAL SPONSORS	12
H. PROPOSAL FEES	12
I. STEP 2 PROPOSAL SECURITY	12
V. PROPOSAL PRICING	13
A. PPA PROPOSAL PRICING	13
B. UTILITY OWNERSHIP PROPOSAL PRICING	14
VI. PROPOSAL EVALUATION	15
A. CURE PERIOD	16
B. NON-ECONOMIC SCORING CRITERIA	16
C. STEP 1	17
D. STEP 2	19
E. CONTRACTING	20
VII. WINNERS' FEE	20
VIII. ADDITIONAL INFORMATION	21
A. INTERCONNECTION TIMELINE AND PPA TERM	21
B. TRANSMISSION GRID LOCATIONAL GUIDANCE	21
C. PRODUCTION ESTIMATES	22
D. CONTROL INSTRUCTIONS IN CONTROLLABLE ppa	22
IX. DISPUTES	23
X. NOTICES AND RESERVATION OF RIGHTS	23

APPENDICES

Appendix A	–	FORM OF RENEWABLE POWER PURCHASE AGREEMENT
Appendix B	–	FORM, DIVERSE BUSINESSES
Appendix C	–	FORM OF LETTER OF CREDIT
Appendix D	–	FORM OF SURETY BOND
Appendix E	–	REQUIRED FINANCIAL INFORMATION
Appendix F	–	SAMPLE SCORING SHEET
Appendix G	–	RECOMMENDATIONS FOR ESTABLISHING NATIVE POLLINATOR HABITAT ON SOLAR FARMS IN NORTH CAROLINA
Appendix H	–	APPROVED VENDOR LIST
Appendix I	–	ASSET ACQUISITION PVSYST GUIDANCE
Appendix J	–	FORM ASSET ACQUISITION LETTER OF INTENT
Appendix K	–	FORM ASSET PURCHASE AGREEMENT
Appendix L	–	FORM EPC AGREEMENT
Appendix M	–	FORM BUILD TRANSFER AGREEMENT
Appendix N	–	NOTICE OF INTENT TO RESPOND FORM

I. PROGRAM OVERVIEW

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP,” and together with DEC, the “Companies” or “Duke Energy”) are issuing this 2022 solar procurement program (“2022 SP Program”) request for proposals (“RFP”) to procure new solar photovoltaic generating facility resources directly interconnected to the DEC and DEP transmission systems in North Carolina and South Carolina to reliably serve the Companies’ customers’ future energy needs.

The 22 SP Program is being implemented jointly by DEC and DEP as authorized by the North Carolina Utilities Commission (“Commission” or “NCUC”) in Docket Nos. E-2 Sub 1297 and E-7 Sub 1268.

As further discussed in Section IV.A, the Companies are utilizing an independent evaluator, Charles River Associates (“CRA” or the “IE”), to oversee this RFP and to act as the point of contact for all bidders. The IE has established a 2022 SP Program RFP website to facilitate RFP communication among Duke Energy’s bid evaluation team (“Evaluation Team”), market participant (“MP”) bidders and other interested parties: www.Duke2022SolarRFPCarolinas.com.

II. SOLAR RESOURCES TO BE PROCURED IN 2022 SP PROGRAM

The need for new solar resources to reliably serve Duke Energy’s projected customer load was identified in the Companies’ most recent Integrated Resource Plans filed with the NCUC and Public Service Commission of South Carolina (“PSCSC”), and was also identified in the Companies’ 2022 Carolinas Carbon Plan recently filed with the NCUC on May 16, 2022 in NCUC Docket No. E-100, Sub 179. In addition, large commercial and industrial customers in North Carolina and South Carolina have identified their interest in Duke Energy procuring new solar resources for potential future customer-directed voluntary renewable energy programs. New solar resources procured through this RFP may be used for future customer programs, subject to regulatory approval by the NCUC or PSCSC, as applicable.

The Companies are seeking new solar resources through this RFP to be acquired and owned and operated by DEC or DEP (“Utility Ownership Track”) or that will be owned and operated by third parties and that will sell the full output including all renewable and environmental attributes generated by the facility and delivered to DEC or DEP via the Companies’ renewable power purchase agreement (“PPA”) (“Controllable PPA Track”). The 2022 SP Program RFP is not soliciting non-solar resources and is also not seeking proposals that include energy storage systems as part of the proposed facility.

This 2022 SP Program RFP is soliciting a portfolio of approximately 750 megawatts (“MW”) of new solar resources and is specifically targeting procuring 55% (~412 MW) of Utility Ownership Track resources and 45% (~337 MW) of Controllable PPA Track resources (the “RFP Target Volume”).¹ This RFP Target Volume is based on the volume of new solar resources that Duke Energy’s Carolinas Carbon Plan economically selected as need in 2026 to be interconnected and placed into

¹ The RFP Target Volume is a target and limited deviations may also be acceptable to achieve the least cost portfolio of differently sized resources that are bid into the RFP.

service before the beginning of 2027²; however, projects dependent on system upgrades with longer construction timelines will also be eligible. The RFP Target Volume is subject to final approval by the NCUC which is anticipated to be received after the RFP is issued but on or before November 1, 2022, as part of the Carbon Plan review proceeding. In approving the RFP Target Volume, the NCUC may also order allocation targets or minimums between DEC and DEP. To ensure robust market participation in the 2022 SP Program, the Companies have established and obtained NCUC approval to procure a minimum target volume of 700³ MW of new solar resources in DEC and DEP under this 2022 Solar Program RFP (“Minimum Target Volume”).

The RFP Target Volume may also be subject to limited adjustment either or up or down depending on how actual bid prices compare to the assumed prices of solar resources in the Carolinas Carbon Plan (“Carbon Plan Solar Reference Cost”). Before selecting the portfolio of winning proposals, the Companies will calculate the weighted average cost of the total portfolio of Utility Ownership Track and PPA Track resources along with their assigned System Upgrade costs. If the weighted average cost is greater than or equal to 110% of the Carbon Plan Solar Reference Cost (the assumed cost of solar capacity, energy, and related System Upgrades used to develop the Carolinas Carbon Plan), the target volume may be decreased by as much as twenty percent (20%) (subject to 700 MW minimum target), effectively eliminating the highest cost proposals from selection in the 2022 SP Program and deferring some of the modeled procurement volume to the future.⁴ If the weighted average cost is less than or equal to 90% of the Carbon Plan Solar Reference Cost, the target volume may be increased by up to 20% above the RFP Target Volume thereby capturing more competitively priced, low cost solar resources for customers through the 2022 SP because they are less expensive than assumed in the Carolinas Carbon Plan. This volume adjustment mechanism will not reduce the volume of new solar resources to be procured below the Minimum Target Volume.

Subject to meeting all requirements of this RFP, Third-party solar developers (“Third-Party MPs”) may submit project proposals (“Proposals”) for consideration in both the Utility Ownership Track and the Controllable PPA Track. Notwithstanding that a Proposal may be submitted into both tracks, the two tracks will otherwise be evaluated separately of each other. Proposal will compete within each track, but Utility Ownership Track Proposals will not compete against PPA Track Proposals (see Section VI Proposal Evaluation below). DEC and DEP may also elect to submit project Proposals into the Utility Ownership Track. Duke Energy’s unregulated affiliates will not be submitting proposals into the 2022 SP Program RFP.

² Note that in the Carbon Plan, what is referred to as forecasted solar for 2027 refers to the quantity online by beginning-of-year 2027, and therefore is the same as the solar forecasted to come online in 2026, which is the RFP Target Volume for the 2022 SP.

³ For the avoidance of doubt, the Minimum Target Volume is intended as a floor and Duke Energy plans to procure at least 700 MW of new solar resources (~385 MW of Utility Ownership Track resources and ~315 MW of Controllable PPA Track resources) through the 2022 SP Program.

⁴ The volume adjustment mechanism is designed to enable Duke Energy to procure an overall portfolio of new solar resources that compares favorably to the Carbon Plan Solar Reference Cost. If increasing the procurement target would cause the cost of the total portfolio including the additional MW to materially exceed the Carbon Plan Solar Reference Cost then Duke Energy retains the right not to increase the procurement target.

A. FACILITY REQUIREMENTS

The 22 SP Program RFP is soliciting Proposals for new solar electric generating facilities (each a “Facility”) that meet all of the following requirements:

1. Solar PV: RFP is for new solar photovoltaic generating facility and may be either fixed panel or tracking.
2. Location: Facility must be located in the DEC or DEP North Carolina or South Carolina service territory and Facility will physically interconnect with the DEC or DEP transmission system.
3. New Resources: Placed in service after July 22, 2022, and be capable of completing Facility construction (not completion of interconnection) within three years following the end of the contract phase (“Commercial Operation Date”).⁵ Duke Energy may decline to acquire a Facility under the Utility Ownership Track or decline to enter into a PPA with any bidder under the Controllable PPA Track if, in the opinion of Duke Energy, System Upgrades required to interconnect the Facility cannot be constructed in time to achieve Commercial Operation by November 30, 2027.
4. Interconnection: Facility must have submitted a valid interconnection request during the 2022 Definitive Interconnection System Impact Study (“DISIS”) enrollment window [01/01/2022 – 06/29/2022]⁶ or, alternatively, have a fully executed Interconnection Agreement with DEC or DEP prior to 6/6/2022 and not be in default under such Interconnection Agreement but not also having executed a PPA. MPs should note that the DISIS enrollment window closes before the 22 SP Program bid window and complete an interconnection request accordingly. MPs participating in the 2022 SP having the aforementioned fully executed Interconnection Agreement shall be solely responsible for the cost of any System Upgrades⁷ assigned to it under its Interconnection Agreement and shall bid accordingly as participation in 2022 SP will not alter any contractual obligations included in the MP’s executed Interconnection Agreement.⁸ Note that in the

⁵ For the avoidance of doubt, an MP is not required to obtain a certificate of public convenience and necessity (“CPCN”) to construct the Facility prior to submitting a Proposal, but will be required to establish a reasonable plan for obtaining all necessary permits and certificates (including a CPCN, if required) in a timely manner. Also, for the avoidance of doubt, an MP may not submit a Proposal for a Facility that has an existing off-take agreement.

⁶ The queue number is typically established within 14 days of an interconnection request being submitted. If the queue number is not available by the time the RFP proposal is submitted, the identification number from the Proposal’s interconnection request application, which is generated at the time of application submission, is also acceptable in the bid form.

⁷ System Upgrades are inclusive of Network Upgrades and any Distribution Upgrades under the North Carolina Interconnection Procedures or South Carolina Generator Interconnection Procedures, if applicable (for Controllable PPA projects). This term is intended to also represent Network Upgrades under the FERC Large Generator Interconnection Procedures, if applicable (for UOT projects).

⁸ Proposals with an executed Interconnection Agreement should note that, given recent construction and labor cost increases, the interconnection and system upgrade cost estimates in the Interconnection Agreement may be significantly understated. PPA track proposals with executed Interconnection Agreements will be responsible for

event that, during the 2022 SP evaluation process, a non-curable default occurs, or if the bidder fails to affect a timely cure of a curable default, or the relevant Interconnection Agreement is terminated, the MP shall be removed from the evaluation process and, if applicable, forfeit the Step 2 Proposal Security.

5. Environmental Matters: Facility will comply with the legal environmental standards and requirements respecting the development site identified in the Proposal, and bidder will avoid, minimize, mitigate, and as appropriate, permit and obtain any required regulatory authorization for any environmental impacts, as required under applicable federal and state law, for the Term of the PPA. As part of the Proposal, a bidder must address the status of permitting required to develop the Facility and plans to obtain all required permits with specific focus on environmental matters. Bidders are also encouraged to address how the Facility's design and operation exceeds applicable requirements and promotes environmental stewardship in the Carolinas. For Controllable PPA Track projects located in North Carolina, the Facility shall be responsible for complying with future regulations established by the Department of Environmental Quality to ensure adequate financial resources for the decommissioning of utility-scale solar projects pursuant to Section 3 of Session Law 2021-165.
6. Dispatch, Operate, and Control: All Facilities procured under this Program shall provide Duke Energy control rights to direct the operation of the Facility in the same manner as the Companies' owned solar resources. For Controllable PPA facilities, DEC has the right to curtail energy from the Facility up to five percent (5%) of the Facility's annual energy production and DEP has the right to curtail energy from the Facility up to ten percent (10%) of the Facility's annual energy production, without compensation to the Facility owner for non-emergency purposes. A Facility must be compliant with applicable DEC/DEP Facility Connection Requirements.
7. Other Facility Requirements: Additional Facility requirements are identified in Section III depending on whether the Facility is being submitted into the Utility Ownership or Controllable PPA Proposal Track.

III. PROPOSAL TRACKS

Proposals may be submitted under the Utility Ownership Track or Controllable PPA Track (or both):

Proposal Type	Proposal Structure
Utility Ownership Track	Market Participant (third party or DEC or DEP) offers full ownership of the Facility. Utility Ownership Track Proposals shall be submitted as one of the following:

funding all interconnection costs. Please refer to the Standard Interconnection Costs document on the RFP website for updated cost information to inform bid pricing. .

	(a) Asset Transfer , (b) Asset Transfer Plus EPC , (c)Build-Own-Transfer , or (d) Utility Self-Developed.
Controllable PPA Track	Levelized (non-escalating) payments for full output of Facility (capacity, energy, and environmental and renewable attributes) in \$/MWh terms for 25 years from the commercial operation date. The pro forma PPA is attached as Appendix A .

A. UTILITY OWNERSHIP TRACK PROPOSALS

Proposals for Facilities in the Utility Ownership Track must also meet all of the following:

- Sized over 20 MW (based on the interconnection request). A Facility must have a single point of interconnection (“POI”) to interconnect with the DEC or DEP transmission system
- Be designed to meet Duke Energy’s design criteria (see **Appendix L** EPC Agreement exhibits).
- Equipment must be sourced from approved vendors (see **Appendix H** Approved Vendor List).

Utility Ownership Track is comprised of both utility self-developed and Asset Acquisition proposals. Asset Acquisition Proposals (as defined below) include Asset Transfer, Asset Transfer Plus EPC and Build-Own-Transfer Proposal categories. Utility Ownership Track Proposals shall be submitted as one of the following:

- (a) **Asset Transfer:** whereby the third party MP is proposing to sell a fully developed project and is responsible for, but not limited to, project siting, land control, development, site investigation, surveying, title work, permitting, limited engineering, and all interconnection studies. The parties would enter into an Asset Purchase Agreement (“APA”) (provided as **Appendix K**) in which the developed project assigns or transfers all assets, rights, etc. to DEC/DEP upon satisfaction of all development and closing conditions, which generally occurs prior to the start of construction. Duke Energy is then responsible for final engineering, procurement, and construction of the Facility. The MP sponsoring the Proposal is responsible for executing and maintaining the Facility’s interconnection agreement until the point which it is assigned to DEC or DEP at APA closing. The developer shall use an inverter supplier from Duke Energy’s Approved Vendors List (“AVL”) on the interconnection application and studies.⁹
- (b) **Asset Transfer Plus EPC:** whereby the Third Party MP is proposing to sell a fully developed project and is responsible for, but not limited to, project siting, land

control, development, site investigation, surveying, title work, permitting, engineering, all interconnection studies and all procurement and construction of the Facility pursuant to an Engineering, Procurement and Construction (“EPC”) Agreement (provided as **Appendix L**). Duke Energy and the Proposal sponsor would enter into an APA in which the developed project assigns or transfers all assets, rights, etc. to DEC/DEP upon satisfaction of all development and closing conditions, which generally occurs prior to the start of construction. The parties also enter into an EPC Agreement in which the MP is responsible for final engineering, procurement, and construction of the Facility. The Facility must comply with Duke Energy’s design criteria (see **Appendix L** EPC Agreement exhibits) and AVL. The MP Proposal sponsor is responsible for executing and maintaining the Facility’s interconnection agreement until the point which it is assigned to DEC or DEP at APA closing.

- (c) **Build-Own-Transfer (“BOT”)**: whereby the third party MP is proposing to sell a fully developed and constructed, turn-key, Facility to DEC or DEP. The MP is responsible for all project development activities, including but not limited to, project siting, land control, development, site investigation, surveying, title work, permitting, engineering and all interconnection studies. The parties would enter into a Build Transfer Agreement (“BTA”) (provided as **Appendix M**) in which the MP is responsible for all development scope, engineering, procurement, and construction of the Facility. The Facility must comply with Duke Energy’s design criteria (see EPC Agreement exhibits) and AVL. The MP is responsible for executing and maintaining the Facility’s interconnection agreement until the point which it is assigned to DEC or DEP at BTA closing, upon satisfaction of closing conditions, which is generally between mechanical completion and placed in service milestones.
- (d) **Utility Self-Developed**: utility self-developed facilities are defined as facilities that are originated or developed by Duke Energy whereby DEC or DEP is responsible for all project siting, development, permitting, engineering, procurement, and construction activities. The Duke Energy Utility Ownership Team will submit any Utility Self-Developed Proposals into the RFP in advance of the Proposal due date as described in section IV.D. Proposals shall include all relevant information required for the Duke Energy Evaluation Team and the IE to reasonably compare self-developed facilities to other Third-Party MP-sponsored Utility Ownership Track Proposals. Utility Self-Developed Proposals will be bid using the same templates, forms, and pricing requirements applicable to MP Proposals for Utility Ownership Track. Utility Self-Developed Proposals will meet the same requirements as Proposals submitted by Third-Party MPs.

B. CONTROLLABLE PPA TRACK PROPOSALS

Proposals in the Controllable PPA Track must also meet all of the following:

- Sized over 20 MW and under 80 MW (based on the interconnection request). A Facility must have a single POI to interconnect with the DEC or DEP transmission system. A

bidder may not aggregate facilities (i.e., cannot combine projects located on different sites or on the same site with a different POI to meet the minimum size requirement).

- Commit to sell 100% of its renewable electrical energy, capacity, and all environmental and renewable attributes to DEC or DEP for the solicited twenty-five (25) year term of the renewable PPA. Bidders are to provide a Profile(s) for each bid that begins on the Facility's proposed Commercial Operation Date. Duke Energy will not accept a bid that constitutes partial output from a Facility. A bid must represent the full output of the Facility, which is the full capability of the Facility.
- Have submitted Form 556 to the Federal Energy Regulatory Commission on or before the date of submission of the Proposal to obtain qualifying facility ("QF") certification.
- Bidders submitting Controllable PPA Track proposals should submit a state-jurisdictional interconnection request under the North Carolina Interconnection Procedures or South Carolina Generator Interconnection Procedures, as applicable.

The 2022 SP Program is requesting only a single twenty-five (25) year term of Controllable PPA. All PPA Proposals must meet the technical specifications set forth in the PPA, as determined by the IE and the Duke Evaluation Team. The pro forma PPA is provided as **Appendix A**. After closure of the RFP comment period and issuance of the RFP, the pro forma PPA is not subject to negotiation or adjustment for purposes of the 2022 Solar RFP.

IV. RFP PROCESS

A. INDEPENDENT EVALUATOR

The Companies have retained CRA to act as IE for the 2022 SP RFP. The IE serves to maintain transparency and fairness in the RFP process, which helps to prevent claims of bidder favoritism in the evaluation and selection of winning projects. The scope of CRA's responsibilities were presented to the NCUC as Attachment 2 to Duke Energy's March 14, 2022 Petition for Authorization of the 2022 SP Program in Docket Nos. E-2 Sub 1297 and E-7 Sub 1268, and generally include (i) administering the RFP pre-solicitation process and evaluating the RFP evaluation methodology and bid documents; (ii) managing the 2022 SP Program RFP website ("IE RFP Website") and interfacing with MPs and other interested parties; (iii) monitoring Duke Energy Evaluation Team to ensure fairness and transparency in the bid evaluation process; (iv) providing reports on the final draft RFP and final RFP results; (v) engaging with the Public Staff-North Carolina Utilities Commission and South Carolina Office of Regulatory Staff, as requested; and (vi) utilizing the 2022 SP Proposal evaluation methodology to evaluate all Proposals in accordance with the evaluation process established and described in Section VI to ensure that all Proposals are treated equitably throughout the RFP.

The IE is intended to be the single point of contact for bidders and interested parties related to the 2022 SP Program RFP. In no instance may a bidder or interested party contact any member of the Evaluation Team to discuss any substantive issue related to the RFP, the RFP documents, the RFP process, the bid evaluation process or any subjects related to this 2022 SP RFP. All such inquiries are to be directed to the IE, through the IE RFP Website or using the IE's email address and the IE

may arrange a discussion between the Duke Evaluation Team and bidder. The IE shall participate in any such discussion between a bidder and the Duke Evaluation Team. Any breach of this requirement may result in bid disqualification.

B. RFP ACCESS AND INSTRUCTIONS

CRA hosts a website (“IE RFP Website”) that serves as the required vehicle for all RFP communications. Respondents and interested parties must be registered on the IE RFP Website to access further information related to the RFP. The IE RFP Website may be accessed at www.Duke2022SolarRFPCarolinas.com.

Registered parties may submit questions concerning the RFP on the “Submit Questions” page of the IE RFP Website. The IE will anonymize the questions as necessary before forwarding them to Duke Energy. The responses will be sent directly to the inquirer, or an anonymized version will be posted for viewing by all persons on the “View Q&A” page of the IE RFP Website. A confidential message board will also be available to bidders in the RFP to facilitate Proposal-specific questions. After the Proposal submission date, the confidential message board or the IE’s dedicated 22 SP Program e-mail address will be used should the IE, Duke Energy, or a bidder seek clarification concerning a Proposal.

Respondents who intend to submit a proposal into the 2022 SP Program RFP are strongly encouraged to also submit a non-binding Notice of Intent to Respond (NOIR) in advance of RFP issuance. The NOIR form is provided as **Appendix N**. The Companies request that completed NOIR forms be emailed to the IE at the earliest date possible but no later than 12:00 PM Eastern Daylight Time on **June 22, 2022**. There is no fee required to submit a NOIR.

Final proposals and all associated documentation must be submitted to the IE through the IE RFP Website on or before **12:00 PM EDT (Noon) on July 22, 2022.**

C. 2022 SP PROGRAM RFP SCHEDULE

The table below presents the planned 2022 SP Program RFP schedule. The 2022 SP Program RFP schedule may be modified by Duke Energy after consultation with the IE. MPs will receive notification of any schedule changes through the IE RFP Website.

Milestone	Date¹⁰
2022 SP Program RFP Website Goes Live	04/14/2022
Draft PPA and RFP documents posted to IE RFP Website and comment period opens	04/15/2022
Stakeholder Meeting 1 with MPs to Provide RFP Overview and Discuss RFP documents	04/18/2022
Comment period on draft RFP documents closes	04/30/2022 (extended to 05/04)
Stakeholder Meeting 2 to Discuss MP feedback on RFP documents	05/13/2022

¹⁰ Dates are "projected" based on 2022 DISIS and subject to change.

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
2022 Solar Procurement Program RFP

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Jun 17 2022

Milestone	Date ¹⁰
RFP Target Volume established by Carbon Plan	05/16/2022
NCUC Order authorizing 2022 SP Program	05/26/2022
IE Pre-solicitation report re: RFP documents	06/01/2022
Final RFP document and PPA filed with NCUC	06/01/2022
RFP Issued and Bid window for submission of Proposals opens	06/20/2022
Notice of Intent to Respond due (recommended)	06/22/2022
2022 DISIS Interconnection Request Deadline	06/29/2022
Deadline for submission of Utility Self-Developed Proposals	07/14/2022
Deadline for submission of Third-Party MP-Sponsored Proposals 12:00 pm EDT (Noon)	07/22/2022
RFP Bid Cure Period	07/16/2022 – 08/05/2022
2022 DISIS Phase 1 Study	08/29/2022 - 11/26/2022
RFP Step 1 ranking complete, invitation to Step 2 announced, Step 1 winners announced, if any	11/28/2022
Step 2 Proposal Security due for Step 2 proposals and for Step 1 winners (“Early Winners”), if any	~10 business days after invitation to Step 2 announced, 12/12/2022
Additional Proposals invited to Step 2, as needed	12/13/2022 – 12/26/2022
DISIS Customer Engagement Window closes	12/26/2022
Early Winners’ PPAs executed and Letter of Intent for UOT and acknowledgement form for self-developed	01/20/2023
DISIS Phase 2 Study	12/27/2022 - 5/25/2023
Step 2 Proposals must provide bid price refresh and may provide additional non-economic updates to IE	04/03/2023
Projected Conclusion of Step 2 and winning MPs notified	05/11/2023
End of DISIS Phase 2	05/25/2023
Projected Contracting period for PPAs and Letter of Intent execution for Utility Ownership Track	05/12/2023 – 06/14/2023
Additional winners may be selected to sign contracts by 6/24 if any winners fail to execute contracts/LOI/agreements by 6/14/23	06/15/2023 – 06/24/2023

D. UTILITY OWNERSHIP TEAM AND BID REFRESH SUB-TEAM SEPARATION

Duke Energy has established a “Utility Ownership Team” that will be responsible for (i) preparing any Duke Energy-sponsored bids for Utility Self-Developed Proposals for submission into the RFP, (ii) completing initial bid evaluation and final cost development for Asset Transfer-only bids acceptable to Duke Energy for submission into RFP; and (iii), supporting bid evaluation of Non-Economic Scoring Criteria for Utility Ownership Track Proposals, as detailed in Section VI.B.

To ensure confidence in the fairness of the bid evaluation process, the Duke Energy Utility Ownership Team is required to submit any Utility Self-Developed Proposals no less than 24 hours before the RFP window closes and must complete bid development for any Asset Transfer-only proposals and resubmit such proposals to the IE for evaluation prior to receiving Asset Transfer plus EPC or Build-Own-Transfer proposals for Step 1 review.¹¹ If Duke Energy submits any Utility Self-Developed Proposals into the RFP, the IE will also independently evaluate and rank these Utility Ownership Track Proposals to provide transparency that Duke Energy Utility Self-Developed Proposals were fairly evaluated compared to Third Party MP's acquisition bids.

The IE will monitor all bidder communications with the Duke Energy Utility Ownership Team, which will go through the IE's email account or website messaging portal to keep record of communications in writing. If the DEC/DEP Utility Ownership Team requires phone communications with an Asset Acquisition Proposal sponsor, then the IE will participate and monitor the call/teleconference.

In addition, to ensure no perception of undue advantage arises as a result of the pre-established Step 2 bid refresh described in Section VI.D, Duke Energy has established separation requirements pursuant to which (i) Utility Ownership Team members will not be involved in or responsible for the economic evaluation of any Proposals (which will be performed by the IE and the Duke Evaluation Team); and (ii) a separate Utility Bid Refresh Sub-Team has been established that will solely and exclusively be responsible for the Step 2 bid refresh for any Utility Self-Developed Proposals and Asset Transfer-only bids. Once Utility Self-Developed Proposals and Asset Transfer-only Proposals are submitted into the RFP, the Utility Bid Refresh Sub-Team shall maintain separation from the Utility Ownership Team and not have access to any Asset Transfer Plus EPC or Build-Own-Transfer Proposal information until after the RFP winners are announced. All members of the Utility Ownership Team, Utility Bid Refresh Sub-Team and the Evaluation Team will be identified in writing to the IE before the close of the bid window. All Duke Evaluation Team, Utility Ownership Team, and Utility Bid Refresh Sub-Team members are also required to execute acknowledgements prior to the close of the bid window regarding compliance with these separation requirements, which will be provided to the IE. If a Utility Self-Developed Proposal or Asset Transfer-only bid is selected as a winner in the RFP, all Utility Ownership Team members and Utility Bid Refresh Sub-Team members shall also execute acknowledgements regarding compliance with the separation requirements.

Market participants should be aware that members of the Duke Evaluation Team, the Utility Ownership Team, and the Utility Bid Refresh Team may work with each other on other projects not related to the 22 SP Program RFP, but are prohibited from discussing or disclosing, directly or indirectly through a conduit, Confidential Information with: (i) the Utility Bid Refresh Sub-Team except in accordance with the procedures outlined in this RFP (limiting such disclosures to Utility Self-Developed Proposals and Asset Transfer-only bids with involvement of IE), or (ii) any other Company employee, individual or entity without a business need to know. No transfer of an employee of the Company shall be used to circumvent this prohibition to create a conduit for the prohibited transfer of Confidential Information.

¹¹ To the extent a MP provides updated design specification information after Step 1 of the bid evaluation process, the IE may coordinate with the Duke Energy Utility Ownership team for review of such updated information.

E. CONFIDENTIALITY

Each bidder is prohibited from disclosing to others the ongoing status of any bid, and the information exchanged and discussed between the bidder and Duke Energy (“Bidder Information”); provided, however, a bidder may disclose Bidder Information to the IE, the Public Staff as well as to the bidder’s affiliates’ officers, employees, consultants, attorneys, agents, bankers, accountants, and contracting parties (“Representatives”) as reasonably necessary for such bidder to participate and perform as a bidder in this RFP, or to a prospective investor, lender or purchaser of the development assets or facility bid into the RFP solely for the purposes of performing due diligence related to a potential transaction (“Potential Counterparty”); provided, further, that as a condition to any such disclosure to such Representatives or Potential Counterparty (i) the bidder must direct its Representative or Potential Counterparty not to disclose the Bidder Information, and (ii) such Representative or Potential Counterparty must be subject to a contractual obligation to maintain the confidentiality and not disclose Bidder Information. If the Representative or Potential Counterparty cannot be made subject to a contractual obligation to maintain confidentiality of the Bidder Information, the bidder must obtain Duke Energy’s prior written consent before making the disclosure.

Duke Energy and the IE will not publicly disclose the identity of MPs during the Step 1 and Step 2 evaluation process. However, at the conclusion of the Step 2 evaluation, upon selection of winning MPs, Duke Energy and/or the IE shall be permitted to publicly identify all 2022 SP participants that submit Proposals in response to any NCUC or PSCSC-directed reporting requirements. After the PPA or relevant asset acquisition agreement has been executed, Duke Energy and the IE and the winning bidder who has executed the agreement are allowed to publicly disclose the winning projects’ location, name, size, and owner/seller, subject to the terms and conditions of the Controllable PPA or applicable UOT agreements between the bidder and Duke Energy.

Duke Energy will take reasonable precautions and use reasonable efforts to protect any proprietary or Confidential Information contained in a bid, provided a bidder clearly identifies that such information is confidential on each page on which such Confidential Information appears. MPs are instructed to identify information they desire to be treated as confidential by marking each page of each document “CONFIDENTIAL.” Such information may, however, be made available under applicable state or federal law to the NCUC, PSCSC, Public Staff, Office of Regulatory Staff or other governmental authorities having appropriate jurisdiction over this RFP. Duke Energy reserves the right to release such information to the IE and such governmental authorities as needed to monitor this RFP. Under no circumstances will the Companies or the IE be liable for any damages resulting from any disclosure before, during, or after the RFP process.

F. PROPOSAL SIZE FLEXIBILITY

MPs will be permitted to identify the minimum size of the Facility (up to a 10% maximum reduction¹²) that the MP is willing to provide at the same \$/MWh price for Part A of the PPA bid (as defined in Section V.A of this RFP) or the same \$/MW_{AC} price for a Utility Ownership Track

¹² The maximum reduction percentage is based on Section 1.6.1.7 of the NCIP and Attachment 1 of the SC GIP.

bid. For example, for a 50 MW Proposal, the MP could indicate that it is willing to deliver a Facility sized anywhere between 45-50MW for the same \$/MWh price.

G. MARKET PARTICIPANTS AND PROPOSAL SPONSORS

DEC and DEP recognize that MPs may utilize partners or sponsors (“Proposal Sponsors”) for Proposal development. Proposals that rely on Proposal Sponsors to meet RFP requirements must provide evidence that is satisfactory to the IE of a binding legal partnership or similar relationship with such Proposal Sponsor.

Historically underutilized businesses are encouraged to participate in the RFP. Duke Energy will favorably evaluate the opportunities provided to qualified and certified minority-owned and women-owned firms when selecting suppliers and contractors from which Duke Energy purchases goods and services. Duke Energy encourages its suppliers and contractors to provide an opportunity when competitively possible to qualified and certified minority and women businesses; thus, information provided with the proposal or bid which describes the Proposal Sponsor’s commitment to utilizing minority and women owned firms to fulfill this agreement will be a consideration during evaluation. The definitions to be categorized for such purposes are set forth in **Appendix B** to this RFP.

H. PROPOSAL FEES

Each MP, including DEC and DEP, is required to submit with each Proposal a non-refundable “Proposal Fee” of ten thousand dollars (\$10,000). In addition, successful MPs will be responsible for a pro-rata share of the Winners’ Fee (as hereinafter defined).

MPs electing to submit a Proposal under both Utility Ownership Track and Controllable PPA Track may submit a single Proposal Fee. Payment is due at the time of Proposal submission and must be received no later than 12:00 PM EDT (Noon) on the Proposal due date. Failure to submit the Proposal Fee will result in automatic disqualification of the Proposal from further consideration.

Proposal Fees are non-refundable and for the avoidance of doubt, will not be refunded in the case of any modification of this RFP schedule, rejection of any Proposal, or failure by a winning Third Party MP to execute a PPA.

I. STEP 2 PROPOSAL SECURITY

1. Third-Party MPs

Proposal security in the amount of \$20/kW minus the M1 security to enter DISIS Phase 1, (based on the Facility’s interconnection request capacity) must be posted by all Third-Party MPs that are selected to move into Step 2 of the evaluation process (“Step 2 Proposal Security”). This Step 2 Proposal Security can be in the form of (i) cash; (ii) a surety bond; or (iii) a letter of credit (“LOC”), in each case, in a form acceptable to the Companies and issued by an entity that meets the Companies’ issuer requirements and naming DEC or DEP (as applicable) as the sole beneficiary. An issuing bank for the LOC must have a minimum credit rating of A- from S&P and

A3 from Moody's and a surety must be rated A.M. Best "A- VII" or higher. Surety bonds must be irrevocable and require payment by the surety within ten calendar days of demand. Interest will not be paid on cash deposits. An example of acceptable LOC is provided in **Appendix C** and an acceptable surety bond is provided in **Appendix D**.

It is recommended that MPs provide draft forms of Proposal Security, if not posting cash, to DEP and/or DEC through the IE prior to November 15, 2022, to allow sufficient time for the Companies to review and confirm the Proposal Security materially conforms to the forms provided in **Appendix C** and **Appendix D**, respectively. The Companies will notify the MPs once the Step 1 RFP evaluations are completed with Phase 1 interconnection cost estimates (approximately November 28, 2022) if they have been invited to formally move into the Step 2 Evaluation, at which point, the MP must post the Step 2 Proposal Security within and no later than ten (10) business days after the notification date. If a Proposal does not timely provide the Step 2 Proposal Security, then the Evaluation Team may eliminate the Proposal from the RFP and identify and invite additional replacement Proposals to be evaluated in Step 2.

2. Utility Ownership Team Self-Developed Proposal

In the case of Utility Self-Developed Proposals, the Duke Energy Utility Ownership Team will be required to acknowledge that in the event such Proposal is selected as a winner and fails to execute an acknowledgment form, an amount equal to \$20/kW minus the M1 security to enter DISIS Phase 2 will be due from the utility and will be used to reduce the Winners' Fee assigned to other winning bidders.

3. Step 2 Proposal Security Releases

The amount of the Step 2 Proposal Security will be released (i) if the Proposal is eliminated by the Companies due to failure to meet any required RFP criteria or action; (ii) if the Proposal is not selected as a winning proposal; or (iii) if the Proposal is selected as a winning Proposal, upon completion of the contracting phase of the RFP, including execution of the PPA/Asset Acquisition Agreement and posting of security as required in the applicable agreement. DEC/DEP will be entitled to draw on the full amount of the Step 2 Proposal Security in the event that the MP (a) withdraws its Proposal during Step 2 of the Evaluation Process; or (b) if the Proposal is selected as a winning Proposal but the MP fails to execute the contract or relevant agreement (for UOT).

V. PROPOSAL PRICING

A. PPA PROPOSAL PRICING

All Controllable PPA Proposals must submit two parts to the bid price for the entire twenty-five (25) year PPA term: a levelized dollar per megawatt-hour price (known as the "Part A Price" and denominated in \$/MWh) and a levelized dollar per megawatt-hour price *per million dollars of system upgrades assigned* (known as the "Part B Price").¹³ The Part A Price must include all

¹³ Section X reserves Duke Energy's rights to modify or amend the RFP in the future should such amendment be in the best interest of Duke Energy's customers. Duke Energy has identified for MPs during the pre-solicitation process that the Companies plan to evaluate whether to require MPs to submit a mandatory Part A Second Price in the event that a change in Federal law provides enhanced tax incentives prior to the execution of the PPA.

attendant project costs to achieve Commercial Operation up to the POI, including the cost to directly connect to the existing DEC/DEP transmission system (“Interconnection Facilities”). Interconnection Facilities costs at the POI will include all DEC’s/DEP’s costs to connect the Facility to the existing transmission system delivery point. The Part A Price shall not include the costs of upgrades to the transmission system beyond the POI.

The Part B Price adjuster is denominated on a \$/MWh basis for every \$1 million in System Upgrades identified in the Interconnection Agreement. The System Upgrade cost estimate (in millions of dollars) for a Proposal would be multiplied by the Proposal’s Part B Price to calculate the adder needed to be made to the Part A Price if the Proposal were to pay for all System Upgrade costs (“Contract Price Adder”). For example, if the bidder’s assumed System Upgrades cost identified in the Interconnection Agreement is \$1.50 million and the submitted Part B Price adjuster is \$1/MWh per \$1 million in costs, then the Contract Price Adder to the Part A Price would be \$1.50/MWh (\$1.50 million of upgrades x \$1/MWh).

For all Controllable PPA proposals, the MP has cost responsibility for the transfer trip scheme, which will include the cost of communications equipment required to operate the transfer trip scheme. MP-owned equipment up to the POI often includes equipment such as the generator step-up transformer (for conversion up to the interconnecting voltage level), facility side generator breaker (as needed), and all station service equipment. Utility-owned equipment typically includes metering, protective equipment, relays, and other new electrical infrastructure and specific configurations for transmission connections as discussed in more detail below. System Upgrade costs will be identified in the DISIS cluster process (unless the Proposal has an existing Interconnection Agreement). Any costs from Affected System Studies and network upgrades for Affected Systems will be borne by the bidder.

MPs with executed Interconnection Agreements will be responsible for all direct interconnection and System Upgrade costs in accordance with the terms of the Interconnection Agreement. Such proposals will only be required to submit a Part A Price and will not be eligible for a Part B Price adjustment, and may wish to incorporate adjustments to the interconnection costs estimated in their executed Interconnection Agreement when establishing their bid price. A document of updated Standard Interconnection Cost Estimates is available on the RFP website.

As explained in VI.D. (“Step 2”) below, PPA Track proposals in Step 2 will also be required to submit a refreshed Part A Price (not to exceed the original Part A Price), on or about April 3rd, 2023 and may also provide updates regarding non-economic factors to the IE at that time.

B. UTILITY OWNERSHIP PROPOSAL PRICING

Utility Self-Developed Proposals shall include all costs to develop, construct and operate the facility and submit all pricing details as required in the bid submittal form.

MPs submitting Asset Transfer Proposals shall submit a fixed price to sell the fully developed project to DEC or DEP. The Duke Energy Utility Ownership Team will then estimate and provide the IE with the remaining costs to construct and operate the facility and submit all pricing details as required in the submittal form. Price, payment terms and scope will be memorialized by

executing a Letter of Intent (“**LOI**”) (provided as **Appendix J**) during the 30 days after the winners are announced. The parties will then execute the APA.

MPs submitting Asset Transfer Plus EPC Proposals shall submit a fixed price to sell the fully developed project to the Utility along with a fixed price EPC contract price. The Duke Energy Utility Ownership Team will then estimate and provide the IE with its costs to oversee construction and operate the facility and submit all pricing details as required in the submittal form. Price, payment terms and scope will be memorialized by executing a LOI during the contracting period. The parties will then execute the APA and EPC Agreement.

MPs submitting BOT Proposals shall submit a fixed price to sell the fully developed and constructed turn-key project to the Utility. The Duke Energy Utility Ownership Team will then estimate and provide the IE with its costs to oversee construction and operate the facility and submit all pricing details as required in the submittal form. Price, payment terms and scope will be memorialized by executing a LOI during the contracting period. The parties will then execute the BTA.

All Asset Acquisition Proposals shall provide the requested cost details related to real estate costs (lease expenses, land acquisition, etc.), as required in the bid submittal form.

All Asset Acquisition Proposal pricing shall be inclusive of all interconnection study costs (but should exclude any accounting true ups for study costs which shall remain with the MP) and costs of executing and maintaining the Interconnection Agreement until the agreement is assigned to DEC/DEP at definitive agreement closing. All Utility Ownership Track Proposals are required to ultimately have a federal jurisdictional interconnection agreement. After assignment of the Interconnection Agreement to DEC/DEP, MP shall have no continuing obligations under the Interconnection Agreement and DEC/DEP shall work directly with the Transmission Provider to cause the release or cancellation of security previously provided by MP under the original Interconnection Agreement.

For proposals in DISIS (and not those with an executed Interconnection Agreement), the costs of Network Upgrades should not be incorporated in the MP’s Utility Ownership Track Proposal price. Network Upgrade costs will be identified from DISIS Phase 1 and Phase 2 cost estimates or in the executed Interconnection Agreement, if applicable. However, BOT and certain Asset Transfer Plus EPC proposals (dependent on timing of transfer) may be required to fund the Network Upgrades initially but will be reimbursed for such upgrades by DEC or DEP in accordance with the Asset Acquisition Agreement. More details are available in the UOT term sheets in **Appendix J**.

Form APA, EPC Agreement, BTA, exhibits, and the AVL are provided as appendix material to this RFP.

As explained in VI.D. (“Step 2”) below, Utility Ownership Track proposals in Step 2 will also be required to submit a refreshed bid price (not to exceed the original bid price), on or about April 3rd, 2023 and may also provide updates regarding non-economic factors to the IE at that time.

VI. PROPOSAL EVALUATION

A. CURE PERIOD

Proposals will be evaluated by the Duke Evaluation Team and the IE in accordance with the evaluation process set forth herein. During initial Step 1 evaluation, the IE may allow a MP an opportunity to modify or clarify its proposal to cure a non-conformance or non-substantive deficiency that would otherwise require elimination of the Proposal.¹⁴ The IE will provide the MP with written notice of the deficiency and the MP shall then have five (5) business days after receiving the written notice to cure the deficiency, where failure to cure the deficiency shall result in withdrawal of the Proposal from further consideration. Proposal Fees for a Proposal that fails to timely cure any deficiency identified by the IE shall not be returned and Proposals found by the IE to be non-conforming will not be evaluated.

B. NON-ECONOMIC SCORING CRITERIA

The following non-economic criteria will be evaluated for each Proposal and scored in accordance with the scoring sheet included as Appendix F. Proposals invited to Step 2 may update the IE with additional non-economic information on or about April 3, 2023 to include the new information in their Step 2 ranking.

1. Facility Permitting

MPs should disclose all permits that will have to be obtained and the status of each permit along with a timeline for the completion of all permits that relate to the Proposal. Site evaluation and studies conducted to date, as well as a timeline for completion of these studies, should be included in the Proposal.

2. Financing Experience

Each Proposal should describe the plans for acquiring the necessary funds for developing, constructing, and operating the Facility, as applicable. Such plans should include a discussion of the Facility's legal ownership structure and the expected sources and types of capital that the MP has committed to secure. If available, letters of interest or letters of commitment from such financial partners or key sources of funding should be provided.

For PPA Proposals, MPs must be able to provide evidence of at least one recent successful facility financing completed of comparable size to the Proposal submitted within the last five (5) years.

MPs must provide the financial and credit information set forth in **Appendix E**.

3. Technical Development and Operational Experience

In general, an MP must show experience in developing and operating renewable facilities of comparable size and technology as the Facility submitted in the Proposal. More specifically, an MP must:

¹⁴ MPs will not be permitted to change pricing after the bid submission closes on July 22, 2022 unless they are invited to Step 2 and reduce their price in the bid refresh.

- In the case of PPA proposals, have developed and reached operation or operated a renewable energy project or portfolio of projects >50 MW AC or 3x the nameplate capacity of the Proposal, whichever is less;
- In the case of PPA and Utility Ownership Track Proposals, have completed or directly managed the completion of the development, engineering, equipment procurement, and construction of >50 MW or 3x the nameplate capacity of the Proposal, whichever is greater, of solar facilities, including at least one project of comparable size to the proposed facility within the United States or Canada.

Each bidder must also describe the experience of the principal members of its project team. Proposals should include information on who will be responsible for design, siting, permitting, financing, construction, and on-going operation and maintenance of the Facility, if applicable and known. Each member that will lead key aspects of the project should have experience in leading those tasks on previous projects that are similar to the proposed Facility.

4. Historically Underutilized Businesses

Historically underutilized businesses meeting the requirements set forth in **Appendix B** will be scored in accordance with the score sheet.

5. Environmental Considerations

MPs should provide plans for meeting all environmental requirements. They should provide relevant documents or assessments regarding environmental due diligence and permitting, plans for decommissioning, and any work or results on completed environmental assessments. MPs may consider following the “Solar Site Pollinator Habitat Planning & Assessment Form” provided in Appendix G. Projects that are implementing a plan to include plants to attract pollinators should include a description of the plan. Projects that have established an end-of-life decommissioning plan should make note of such plans. Projects located in North Carolina shall be responsible for complying with future regulations established Department of Environmental Quality to ensure adequate financial resources for the decommissioning of utility-scale solar projects pursuant to Section 3 of Session Law 2021-165. Any expense incurred to comply with the requirements will be the responsibility of the MP and neither the Proposal pricing nor PPA pricing will be revised to accommodate any expense.

C. STEP 1

In Step 1 of the evaluation process, the IE and Duke Evaluation Team will perform the initial ranking of Proposals based on a combination of economic and non-economic criteria. Each conforming Controllable PPA Track Proposal will be evaluated on its levelized cost of energy (“LCOE”) over the twenty-five (25) year analysis period on a \$/MWh basis using the utility allowed weighted average cost of capital to arrive at the LCOE (“25-year NPV Analysis”). The evaluation will be conducted on a \$/MWh basis and therefore will not favor a Proposal based on Facility size. For PPA Proposals, the cost of the Proposal is determined by taking the MP-submitted \$/MWh rate and applying that rate to the Facility’s projected output (8760 hours x 25

years (accounting for degradation)). The energy forecasted to be produced is based on the project-specific information included in the bid.

For Utility Ownership Track Proposals, the Proposal LCOE will be derived by taking the annual facility Cost of Service Revenue Requirement and applying it to the facility's projected annual output over the life of the asset, which is anticipated to be 30 years. A single \$/MWh rate will be derived using the utility allowed weighed average cost of capital.¹⁵

All proposals must include a set of 8760 hourly output projections for each of the 25 years of the PPA term and the 30 years for utility owned. Proposals must be accompanied by PVSyst inputs/outputs and supporting workpapers and calculations demonstrating the basis for the energy profiles proposed. MPs submitting an Asset Acquisition Proposal shall prepare the initial PVSyst model in accordance with the guidance provided as **Appendix I**.¹⁶

As part of the Step 1 evaluation process, Duke and the IE will review the Part B Price and compare it to the utility revenue requirement of System Upgrades on a \$/MWh per million dollars for each Proposal. Whichever option is lower in cost to customers will be the option selected for assessing how the estimated System Upgrade costs are added to the Part A Price to come up with a total cost to customers and compare it to other Proposals' costs to customers. For the avoidance of doubt, Duke Energy will select the System Upgrade payment mechanism which results in the lowest cost for customers (either paid through the bidder using the Part B Price or paid through the utility using the revenue requirement) on a proposal-by-proposal basis.

All compliant Proposals will be ranked in order of the Proposal's LCOE per track. The non-economic criteria specified in Section VI.B. will also be evaluated by the IE and Duke Evaluation Team and scored in accordance with the scoring sheet attached hereto as **Appendix F**, which has been developed by the IE and Duke and sets forth the weighting the IE and Duke will use in determining the Step 1 ranking of all Proposals. During the RFP Step 1 evaluation, the IE and Duke Evaluation Team will receive cost information from the DEC/DEP DISIS Phase 1 System Upgrade estimates, including interdependencies within Phase 1 and interdependencies with prior-queued projects and will factor those results into the RFP Step 1 evaluation process. The Duke Evaluation Team and IE will discuss and evaluate the risk of System Upgrade cost re-allocation from interdependencies and consider the lowest cost and most stable overall portfolio of projects accounting for shared cost allocation and project interdependency risk, and not just the individual rank orders. At the conclusion of Step 1 and after consulting with the IE, the Duke Evaluation team will select and invite Proposal projects forward to the Step 2 RFP evaluation.

The Duke Evaluation Team may announce some proposals to be winners at the conclusion of Step 1 if they meet certain criteria to provide reasonable assurance that they are among the most competitive proposals ("Early Winners"). Eligible Early Winners can be Utility Ownership Track and/or Controllable PPA Track Proposals and may include projects participating in DISIS as well

¹⁵ For UOT Proposals with executed Interconnection Agreements, the IE and Duke Evaluation Team may appropriately escalate the Interconnection Agreement cost estimates to better compare the Proposal's cost estimates to DISIS Study Proposal interconnection cost estimates that are created from the 2022 DISIS Study Process.

¹⁶ SolCast is Duke's preferred irradiance source, but the Companies will accept other data sources.

as projects that have an executed Interconnection Agreement. A Proposal must meet all of the following criteria to be eligible for an award at the conclusion of Step 1:

- Proposal shall have no contingent or dependent network upgrades with any other generator that has not executed an IA.
- Proposal shall not be flagged for an Affected System notification in Phase 1 Power Flow Study
- Proposals must place in the most competitive quartile of projects (inclusive of system upgrades) by number of projects (not by MW)
- The sum total of the MW of the projects that are selected as winners after the Phase 1 Power Flow Study shall not be more than 30% of the total target capacity sought to be procured in the 2022 SP RFP (before volumetric adjustments).

Proposals selected as Early Winners must post proposal security equal to the Step 2 Proposal Security required in Section IV.I by 12/12/2022 in order to confirm readiness for DISIS Phase 2. Proposals selected as Early Winners that timely post security will meet the DISIS Phase 2 readiness requirements through their selection in the RFP (as will all proposals invited to Step 2 that timely post security). Those proposals will proceed to executing their PPA or relevant agreement/Letter of Intent by January 20, 2023.

D. STEP 2

For Proposals invited to Step 2, the Step 2 Proposal Security will be due by 12/12/2022 in order to confirm readiness for DISIS Phase 2. Proposals invited to Step 2 of the RFP will meet the DISIS Phase 2 readiness requirements through their participation in the RFP. However, proposals that withdraw from the interconnection cluster for any reason are still subject to the withdrawal process, including any applicable withdrawal penalties, under the applicable interconnection procedures.¹⁷ If a Proposal invited to Step 2 does not post their Proposal Security by 12/12/2022, the Duke evaluation team may terminate consideration of the Proposal and may alternatively invite additional Proposals forward to Step 2.

In order to provide the most competitive prices to customers and use the most recent market conditions to inform the bid prices, all proposals in Step 2 (both Controllable PPA track and Utility Ownership Track) will be subject to a bid refresh on or about April 3rd, 2023. The refreshed bid prices will be required for all proposals in Step 2; Controllable PPA Track proposals are required to refresh the “Part A Price” of the bid and may not exceed the initial “Part A Price”, and Utility Ownership Track bids must refresh their overall price and may not exceed their initial bid price. The Duke Energy Utility Ownership Team is required to submit any bid refreshes for Utility Self-Developed Proposals no less than 24 hours before bid refresh pricing is due for other MPs.

In Step 2 of the evaluation process, the Duke Evaluation Team will utilize the refreshed bid prices as well as updated interconnection information developed in DISIS Phase 2 including network

¹⁷ See NCIP Section 6.3, SC GIP Appendix Duke CS Section 5.7, and FERC LGIP 4.7, as applicable.

upgrade costs, allocation, and interdependencies with other DISIS facilities or with prior-queued projects. In DISIS Phase 2, the Evaluation Team will also determine if an Affected System notification is required (to alert the Affected System to review the facility for a potential Affected System Study). If a power flow restudy is needed in Phase 2, this determination will be made after the power flow restudy is complete, and if a power flow restudy is not needed, this determination can be made earlier in the Phase 2 window. The bidder is responsible for payment of all system upgrades identified in Affected System Studies and the Affected System may or may not be required to reimburse the generator for upgrades to its system. At the end of the Step 2 evaluation, the IE shall review the assigned System Upgrade costs for the Step 2 projects and the IE will provide feedback on the qualitative risk or System Upgrade cost reallocation as it relates to the final selection of winners.

Selected Proposals shall be notified of their status on or about May 11, 2023, subject to completion of DISIS Phase 2 cost estimates and allocations.

E. CONTRACTING

After initial proposal selection is finalized by the Duke evaluation team and announced by the IE, the winning Controllable PPA Track bidders will have 30 calendar days to execute the PPAs. The Utility Ownership Track acquisition proposals will have 30 calendar days to execute a LOI (provided as Appendix J), with a target date of fully executed asset acquisition agreements by December 29, 2023. For Utility Self-Developed Proposals, the utility will execute an acknowledgement form that DEC or DEP will construct the project within 30 calendar days of the announcement of winners.

If any winners fail to execute the relevant contract or agreement in the allotted 30 calendar days after the announcement of winners, then their offer as a winner may be revoked and DEC/DEP will be entitled to draw on the full amount of the Step 2 Proposal Security. If there is a deficit in the number of MW of executed contracts/agreements to the 2022 SP Program target after the 30 day contracting window, DEC/DEP may extend offers to additional Step 2 Proposals before the end of the DISIS Customer Engagement Window (June 24, 2023) to make up for the deficit and still allow the proposal to meet DISIS readiness requirements.

If the Companies elect to have the Proposal fund the System Upgrade costs associated with the Facility under the Interconnection Agreement, this selection will be announced at the conclusion of Step 2 with the announcement of winners. For such proposals, the Contract Price will be adjusted to include both Part A and the Contract Price Adder (which is Part B multiplied by the millions of dollars of system upgrades in the Interconnection Agreement). In order to effectuate the Contract Price Adder, the Proposal shall provide written notice to the Companies together with a copy of the executed Interconnection Agreement documenting that the system upgrade costs are being charged to the Proposal, as soon as reasonably possible after the execution of the Interconnection Agreement.

VII. WINNERS' FEE

To the extent that Proposal Fees are not sufficient to cover all IE costs, the Companies may assign a "Winners' Fee" to winning Proposals that execute an agreement with the Companies for the 2022

SP in order to satisfy the cost of the RFP. The Winners' Fee is calculated for each winning bid as the pro rata share for any remaining IE costs not covered by the Proposal Fees. Each winning Proposal's Winners' Fee will be determined upon conclusion of the RFP once the IE costs are known and shall be paid by each winning Proposal to DEC or DEP, as appropriate, within thirty calendar days of invoice receipt. Winners' Fees will be allocated among all winning Proposals (including Early Winners) on a pro-rata per MW basis and will be non-refundable. The total amount of the Winners' Fees assigned to all selected Proposals shall not exceed \$1 million.

VIII. ADDITIONAL INFORMATION

A. INTERCONNECTION TIMELINE AND PPA TERM

For transmission-connected projects, commercial operation of the Interconnection Facilities is anticipated to be 26-32 months after execution of an Interconnection Agreement. However, it is important to note that the amount of time required for construction of Interconnection Facilities for transmission-connected projects can be substantially impacted by the number of non-22 SP projects that execute Interconnection Agreements prior to 22 SP winning Proposals or the scope of the System Upgrades assigned to other Interconnection Customers in the DISIS Cluster. There may also be contingent transmission upgrades associated with the Transmission Provider's "Ten Year Transmission Addition Plan" that could impact a project's in-service date.

For the avoidance of doubt, the term of all PPAs shall be twenty-five (25) years from the Commercial Operation Date (as that term is defined in the PPA).

B. TRANSMISSION GRID LOCATIONAL GUIDANCE

For purposes of the 22 SP Program RFP, DEC/DEP have posted grid locational guidance on the IE RFP Website 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 MPs with information regarding areas on the transmission system where System Upgrades are likely needed based upon recent transmission system studies. The RFP Documents page of the IE RFP Website includes a map and supporting documentation. A DEC and DEP list of transmission lines, substations, and deliveries in red zones is available on the respective DEC and DEP OASIS websites¹⁸. Studies will be required to determine the extent and cost, if any, of these System Upgrades.

Transmission areas not identified as zones of known transmission constraints may still require System Upgrades, and transmission studies will be required to determine the extent and cost, if any, of these System Upgrades.

MPs should also be aware that Duke Energy is proposing a DEC and DEP Red Zone Transmission Expansion Plan through the North Carolina Transmission Planning Collaborative¹⁹ ("NCTPC") local transmission planning process. Stakeholder input is being solicited through the NCTPC Transmission Advisory Group ("TAG") and MPs can obtain additional information by

¹⁸ www.oasis.oati.com/duk/index.html or www.oatioasis.com/cpl, in "Generator Interconnection Information"

¹⁹ www.nctpc.org/nctpc/home.jsp

participating in the TAG process. If approved by the NCTPC, Duke Energy's overall transmission expansion plan could be significantly affected by the Red Zone Transmission Expansion Plan, which may change the areas currently identified as "red zones" and impact the assigned costs to future generator interconnections.²⁰ Information on potential transmission upgrades identified through the NCTPC or SERTP process can be obtained through public stakeholder participation in these local and regional transmission planning processes. Information on Duke Energy's transmission planning process and future plans to transform the DEC and DEP transmission systems can also be obtained on OASIS²¹ or by reviewing Duke Energy's May 16, 2022 Carolinas Carbon Plan, as filed with the North Carolina Utilities Commission.²²

C. PRODUCTION ESTIMATES

All MPs shall include an 8760 hourly production profile for the first year of operation as part of their Proposal. The required production profile shall be generated in PVSyst. Production profiles should be based on energy delivered at the POI and taking into account all transformation losses to the POI, including final generation step-up transformer (GSU) transformation (Utility Ownership Track Proposals should see **Appendix I**). For example, transmission interconnected projects should include any transformational losses incurred through the GSU to the high-side of the interconnect. For transmission-connected Facilities, utility power factor requirements should also be included in determination of energy delivered to the POI²³. The production profile provided with the Proposal should not be adjusted for Daylight Savings Time.

D. CONTROL INSTRUCTIONS IN CONTROLLABLE PPA

Section 8.6 to 8.10 of the pro forma PPA addresses DEC/DEP system operators' rights to issue instructions to control the renewable generating facilities procured through the 22 SP Program in the same manner as DEC's/DEP's control of the utility's own generating facilities.²⁴ 22 SP Facilities must be designed with control equipment that will facilitate full or incremental instantaneous control over the Facility in order to take any action directed by the Companies' system operators to implement or otherwise effectuate system operator instruction. General communications and controls protocols and requirements are part of the Companies' Facility Connection Requirements.²⁵ Specific detailed SCADA requirements will be provided to the facility owner during site construction and commissioning of the project.

²⁰ MPs should also be aware that the NCUC's June 10, 2022 *Order Approving Request for Proposals and Pro Forma Power Purchase Agreement Subject to Amendments* in Docket Nos. E-2, Sub 1297 and E-7, Sub 1268 found that it is premature to include the Red Zone Transmission Expansion Plan projects in the 2022 DISIS baseline and directed DEC and DEP not to include these projects in the 2022 DISIS baseline.

²¹ www.oasis.oati.com/duk/index.html or www.oatioasis.com/cpl

²² www.duke-energy.com/our-company/about-us/carolinas-carbon-plan at Appendix P - Transmission System Planning and Grid Transformation.

²³ DEC requires each transmission-connected Facility to be capable of delivering power to the POI within the power factor range of 0.93 lagging to 0.97 leading. DEP requires each transmission-connected Facility to be capable of delivering power to the POI within the power factor range of 0.95 lagging to 0.95 leading.

²⁴ See N.C. Gen. Stat. § 62-110.8(b).

²⁵ Facility connection requirements for DEC and DEP are available on the Transmission Providers OASIS websites. DEP: https://www.oasis.oati.com/woa/docs/CPL/CPLdocs/Duke_Energy_Progress_Facility_Interconnection_Requirements_R2.pdf

The dispatch control entitlements are in addition to otherwise applicable system emergency condition instructions and force majeure instructions, as defined in the Controllable PPA,²⁶ and may be issued by the DEC/DEP system operator for any reason, including planning its security-constrained unit commitment and dispatch for operational efficiency (*e.g.*, avoid taking a large unit off-line for short intra-day durations to avoid operationally excess energy) or to provide for operational flexibility for anticipated operational challenges (*e.g.*, dispatching down facilities to reduce extreme evening ramp rates).

Section 8.9 of the pro forma Controllable PPA specifies that the uncompensated, non-force majeure/emergency curtailment (or Dispatch Down) for the 22 SP is limited to 5% DEC/10% DEP of the facility's annual expected output (specified as MWh). Any non-force majeure/emergency curtailment in excess of the 5%/10% limit will be compensated by applying the full contract price to each MWh of energy that could have been generated but was not due to the dispatch down control instruction(s). Section 8.9 and Exhibit 9 to the pro forma Controllable PPA also describe the methodology that will determine whether the dispatch control entitlement was exceeded during a given year and will be used to calculate any compensation owed to the seller under the Controllable PPA.

IX. DISPUTES

Should a dispute arise between Duke Energy and a Third Party MP relating to this RFP, the MP should provide written notice of the dispute to Duke Energy and the IE and the parties will attempt to informally resolve the dispute with the involvement of the IE. To the extent a Third Party MP seeks further recourse relating to this RFP, MPs retain the right to initiate a complaint proceeding before the NCUC. By submitting a Proposal in this RFP, MPs expressly agree to pursue any dispute relating to or arising out of this RFP (other than disputes under the exclusive jurisdiction of the Federal Energy Regulatory Commission) before the NCUC in the first instance, and not to assert that the NCUC is an improper forum for any such dispute.

To the extent that a Third Party MP initiates a dispute, complaint, or seeks other further recourse relating to this RFP and such action causes additional work and billing from the IE, the IE will track those expenses. Whichever party does not prevail in the complaint or dispute will be responsible for these incremental IE expenses, and if a settlement is reached, the payment of IE expenses will be established in the settlement. Duke Energy reserves the right to require reasonable financial security or other indicia of financial commitment to fund any IE expenses resulting from such dispute or complaint.

X. NOTICES AND RESERVATION OF RIGHTS

The information contained in this 2022 SP Program RFP has been prepared solely to assist bidders in deciding whether or not to submit a Proposal. Duke Energy does not represent this information to be comprehensive or to contain all of the information that a respondent may need to consider in order to submit a Proposal. Duke Energy reserves the right to modify, supplement or withdraw

DEC:https://www.oasis.oati.com/woa/docs/DUK/DUKdocs/DEC_Generator_Interconnection_Requirements_and_Locational_Guidance_T3_11_2021.pdf

²⁶ The Companies will manage dispatch control instructions and system emergency curtailments of Controllable PPA resources in accordance with the Operating Procedures filed January 30, 2018, in Docket No. E-100, Sub 148.

this RFP at any time, whether due to changes in law or otherwise, and including by issuing one or more amendments or addenda to this RFP during this solicitation, which addenda shall become a part of this RFP.

No part of this RFP and no part of any subsequent correspondence by Duke Energy, its affiliates, or their respective employees, directors, officers, customers, agents or consultants shall be taken as providing legal, financial or other advice or as establishing a contract or contractual obligation. Contractual obligations on the part of Duke Energy will arise only if and when definitive agreements have been approved and executed by the appropriate parties having the authority to approve and enter into such agreements.

The Companies reserve the right to request from any MP information that is not explicitly detailed in this document, obtain clarification from a bidder concerning its proposal(s), conduct contract development discussions with selected respondents as well as provide data to and conduct discussions with the IE as necessary for the IE to satisfy the IE's role and responsibilities.

Duke Energy reserves the right to reject any, all or portions of any Proposal received for failure to meet any criteria set forth in this RFP or otherwise and to accept proposals other than the lowest cost Proposal subject to review by the IE and the NCUC. Duke Energy also may decline to enter into any agreement with any bidder, terminate negotiations with any bidder or abandon the RFP process in its entirety at any time, for any reason and without notice thereof. Respondents that submit Proposals agree to do so without legal recourse against the Companies, its affiliates, or their respective employees, directors, officers, customers, agents or consultants for rejection of their proposals or for failure to execute an agreement for any reason. The Companies shall not be liable to any respondent or other party in law or equity for any reason whatsoever for any acts or omissions arising out of or in connection with this RFP.

Each respondent shall be liable for all of its costs incurred to prepare, submit, respond or negotiate its Proposal and any resulting agreement and for any other activity related thereto, and the Companies shall not be responsible for any of the respondent's costs. In submitting a Proposal into this RFP, a MP agrees and accepts that nothing contained in this RFP will be construed to require or obligate Duke Energy to select any Proposal. MPs should be aware that submittals, even if marked "Confidential," may be subject to discovery and disclosure in regulatory or judicial proceedings. The Companies will notify the MP in advance of any required disclosure of confidential information.

APPENDIX A
FORM OF RENEWABLE POWER PURCHASE AGREEMENT

[See attached document]

APPENDIX B DIVERSE BUSINESSES

As an advocate for corporate responsibility, Duke Energy excels among our utility peers in seeking and developing local and diverse businesses, as well as those with environmentally sustainable practices, through our supply chain sourcing strategy. Including Corporate Responsibility as a standard component of the sourcing process creates a standardized approach when evaluating suppliers, while maintaining flexibility based on opportunity and risk avoidance.

Diverse Supplier Designations

The following designations will be utilized in the 2022 Solar Procurement Program to qualify a Market Participant as a Historically Underutilized Business:

Designation	Description	Requirement
WBE	Women Owned Business Enterprise	At least 51% owned
MBE	Minority Owned Business	At least 51% owned
VBE	Veteran Owned Business	At least 51% owned
SDVBE	Service Disabled Veteran Owned Business	At least 51% owned
LGBTBE	Lesbian, Gay, Bisexual or Transgender (LGBT)	At least 51% owned
DBE	Disabled	At least 51% owned

Above business concerns must be at least 51% owned by one or more individuals in the diverse categories or, in the case of any publicly owned business, at least 51% of the stock is owned by individuals within the groups. In addition, the owners must control the management and daily business operations. In case of a permanent or severe disability, the spouse or caregiver of such a service-disabled veteran may control the management and daily operations.

Certification

MP's that meet one or more of the diverse supplier designations above should provide third party certification from the relevant agencies listed on the Duke Energy website at <https://www.duke-energy.com/partner-with-us/suppliers/supplier-diversity>.

APPENDIX C
FORM OF LETTER OF CREDIT

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: _____

Date: _____

Beneficiary:

Duke Energy [Carolinas/Progress], LLC
400 South Tryon Street (ST30)
Charlotte, NC 28202
Attention: Chief Risk Officer

Ladies and Gentlemen:

By the order of:

Applicant:

We hereby issue in your favor our irrevocable letter of credit No.: _____ (“Letter of Credit”) for the account of _____ (the “Applicant”) 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 *[insert date which is one year from issuance]* (the “Expiration Date”), unless terminated earlier in accordance with the provisions hereof or otherwise extended.

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.

We hereby undertake to promptly honor your drawing(s) presented in compliance with the terms of this Letter of Credit, up to the amount then available herein, in no event will payment exceed the amount then 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.

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
2022 Solar Procurement Program RFP

This Letter of Credit shall automatically terminate on the earliest of the following to occur: (i) the making by you and payment by us of the drawings in an amount equal to the maximum amount available to be made hereunder; (ii) the date we receive from you a Certificate of Expiration in the form of Annex 3 attached hereto; or (iii) the above stated Expiration Date.

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 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.

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]*

Duke Energy [Carolinas/Progress], LLC ____ (the "Beneficiary") is drawing the funds requested under this draft based on the below specified draw condition:

[check appropriate draw condition]

☐ [Legal name of bidding entity] (the "Bidder") has withdrawn its proposal in violation of the bidding rules under the Request for Proposals for the 2022 Solar Procurement Program ("RFP") which was issued by [Insert Beneficiary's name] on [insert date of RFP]; or

☐ A proposal submitted by [Legal name of bidding entity] (the "Bidder") has been selected as a winning proposal in the Request for Proposals for the 2022 Solar Procurement Program ("RFP") which was issued by [Insert Beneficiary's name] on [insert date of RFP] and Bidder has failed to execute the *[insert name of required contract]* (the "Agreement") within 90 calendar days of the closing of the RFP; or

[Legal name of bidding entity] (the "Bidder") has received a winning proposal in the Request for Proposals for the 2022 Solar Procurement program ("RFP") which was issued by [Insert Beneficiary's name] on [insert date of RFP] and has failed to meet the creditworthiness requirements under the *[insert name of required contract]* ("Agreement") or to post performance security as required under the Agreement within 5 business days of the execution of the Agreement.

Duke Energy [Carolinas/Progress], LLC

By: _____

Title: _____

ANNEX 3

FORM OF CERTIFICATE OF EXPIRATION

[Insert date of certificate]

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

Attention Standby Letter of Credit Unit

Re: Irrevocable letter of credit No. *[irrevocable standby letter of credit number]* dated *[effective date]* the "Letter of Credit."

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above referenced Letter of Credit may be cancelled without payment. Attached hereto is the referenced Letter of Credit, marked cancelled.

Duke Energy [Carolinas/Progress], LLC

By: _____

Title: _____

Cc: _____ [Bidder]

**APPENDIX D
FORM OF SURETY BOND**

SURETY BOND – 2022 SOLAR PROCUREMENT PROGRAM

COLLATERAL SECURITY PAYABLE UPON DEMAND

* * * * *

PRINCIPAL / BIDDER (Legal Name and Business Address)

<i>SURETY (Legal Name and Business Address)</i>	<i>CONTRACT NO.</i>	<i>CONTRACT DATE</i>
<i>OBLIGEE</i> Duke Energy Carolinas, LLC/Duke Energy Progress, LLC Attn: Credit Risk Manager 400 South Tryon Street (ST30) Charlotte, NC 28202	<i>SURETY BOND EFFECTIVE DATE</i>	
<i>PROPOSAL SECURITY AMOUNT</i>	<i>PENAL SUM OF BOND</i>	

KNOW ALL PERSONS BY THESE PRESENTS THAT: PRINCIPAL (herein, “Bidder”) and SURETY are held and firmly bound to [Duke Energy Carolinas, LLC/Duke Energy Progress LLC] (“Duke Energy”), a limited liability company organized and existing under the laws of the state of North Carolina, its successors and assigns in the amount of \$[insert Bond Amount] (“Proposal Security Amount”), for the payment of which the Bidder and Surety, their heirs, executors, administrators, successors and assigns are hereby jointly and severally bound.

WHEREAS, Bidder has submitted a bid proposal into Duke Energy’s Request for Proposals for the Duke Energy 2022 Solar Procurement Program (“RFP”), which was issued by Duke Energy on [_____];

WHEREAS, Duke Energy has selected Bidder’s proposal (the “Bid”) for further evaluation in Step 2 of the RFP process (such evaluation referred to herein as the “Step 2 Evaluation Process”) pursuant to the RFP;

WHEREAS, Bidder and Surety acknowledge that the RFP process will be delayed and Duke Energy will be harmed if Bidder withdraws the Bid, or if the Bid is selected as a Bid for the Step 2 Evaluation Process and the Bidder does not execute the RENEWABLE POWER

PURCHASE AGREEMENT or the ASSET PURCHASE AND SALE AGREEMENT (as applicable, the “Agreement”) associated with the RFP as requested by Duke Energy and/or fails to provide Performance Assurance as required under and as defined in the Agreement; and

WHEREAS, Bidder desires to furnish this Bond pursuant to the requirement in Section III of the RFP to provide Proposal Security for a bid selected to continue forward into the Step 2 Evaluation Process;

NOW THEREFORE, the condition of this obligation is such that if (i) Duke Energy or the Independent Administrator acting on its behalf notifies Bidder that the Bid has been eliminated from consideration in the RFP, or (ii) Duke Energy subsequently selects the Proposal as a winning Proposal under the RFP and Bidder has executed the Agreement and posted Performance Assurance as required in such Agreement, then this obligation will be null and void; otherwise it will remain in full force and effect, subject to the following additional conditions:

- a. Capitalized terms undefined herein will take the meaning or definition provided in the RFP or where indicated, the Agreement. In the event of any conflict between this Bond and the RFP, the terms of this Bond will control.
- b. If Bidder withdraws the Bid, or if Duke Energy selects the Bid as a winning Proposal and the Bidder does not execute the Agreement with Duke Energy for the Bid within 90 calendar days of the closing of the RFP or fails to meet the creditworthiness requirements or to post the performance security as required under the Agreement within five (5) business days of the execution of the Agreement, then Duke Energy will issue a demand for payment of the Proposal Security Amount to the Surety (“Demand for Payment”).
- c. Surety will, not later than ten (10) business days after delivery of a Demand for Payment to the Surety at the address provided below, pay the Proposal Security Amount to Duke Energy. Surety’s obligation for payment of the Proposal Security Amount will be deemed established regardless of the underlying causes for Bidder’s withdrawal of the Bid and irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of the Surety.
- d. Bidder and Surety acknowledge that the Proposal Security Amount represents a fair and reasonable pre-estimation of the damages due to Duke Energy under the circumstances existing as of the Surety Bond Effective Date and that such amount represents a reasonable estimate of Duke Energy’s losses in the event of (i) Bidder’s withdrawal of the Bid following its selection for further evaluation in the Step 2 Evaluation Process, or (ii) Bidder’s failure to execute the Agreement with Duke Energy for the Bid if selected as a winning Proposal or failure to provide Performance Assurance as required under the Agreement. The Proposal Security Amount will not be deemed a penalty, and the Bidder and Surety hereby waive and forfeit any right to contest the reasonableness or validity of the liquidated Proposal Security Amount. Duke Energy’s right to recover the Proposal Security Amount will in no way limit its entitlement to other non-monetary remedies to which Duke Energy may be entitled pursuant to the terms of the RFP, the Bond, or applicable law.

- e. It is hereby agreed that this obligation is effective beginning on the Surety Bond Effective Date, above, provided that, if this Bond remains in effect after one (1) year following the Surety Bond Effective Date, Bidder may cancel this Bond after such one (1) year period by giving Duke Energy at least forty-five (45) days prior written notice of the cancellation date. Such cancellation notice will be sent by certified mail or by overnight courier with tracking service to:

{Add notice info}

with copy to

Duke Energy [Carolinas/Progress], LLC
Attn: Credit Risk Manager
400 South Tryon Street (ST30)
Charlotte, NC 28202

Any obligations of the Bidder prior to any such cancellation will survive such cancellation and continue to be a liability of the Surety until paid in full by the Bidder.

This Bond is irrevocable by Surety.

- f. Within thirty (30) days following the date of any notice of cancellation of this Bond that is provided to Duke Energy under Paragraph 6, Bidder will provide to Duke Energy a replacement Bond that satisfies the requirements of Section III of the RFP in the amount of the Performance Security required for the pre-COD period. Bidder's failure to provide such replacement Bond in the required timeframe will constitute a default under this Bond and will entitle Duke Energy to issue a Demand for Payment to the Surety for the payment of the Proposal Security Amount.
- g. The Surety's liability is limited to the Proposal Security Amount ("Penal Sum of Bond"), unless suit must be brought for enforcement of the within obligations and in which case the Surety will also be liable for all costs in connection therewith, interest and reasonable attorneys' fees, including costs of and fees for appeals.
- h. Failure of the Surety to pay the Proposal Security Amount within ten (10) business days of Demand for Payment will constitute default of the Surety's obligation under the Bond and Duke Energy will be entitled to enforce against the Surety any remedy available to it.
- i. Surety, for value received, hereby stipulates and agrees that no change, modification, omission, addition or change in or to the RFP or the Agreement, and no action or failure to act by Duke Energy will in any way affect the Surety's obligation on this Bond; and Surety hereby waives notice of any and all such modifications, omissions, alterations, and additions to the terms of the RFP or the Agreement.
- j. If any part or provision of this Bond will be declared unenforceable or invalid by a court of competent jurisdiction, such determination in no way will affect the validity or enforceability of the other parts or provisions of this Bond.

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
2022 Solar Procurement Program RFP

OFFICIAL COPY

JUN 17 2022

- k. The undersigned Surety and Bidder are held and firmly bound for the payment of all legal costs, including reasonable attorney's fees, incurred in all or any actions or proceedings taken to enforce this Bond or the obligations created herein, or payment of any award of judgment rendered against the undersigned Surety. Nothing contained herein will be construed to obligate Duke Energy to pay any fees or expenses incurred in connection with the issuance of this Bond.
- l. All disputes relating to the execution, interpretation, construction, performance, or enforcement of the Bond and the rights and obligations thereto will be governed by the laws of, and resolved in the State and Federal courts in North Carolina. The rights and remedies of Duke Energy herein are cumulative and in addition to any and all rights and remedies that may be provided by law or equity.
- m. The undersigned Surety agent(s) represent that he/she is a true and lawful attorney-in-fact for the Surety and authorized to bind the Surety hereto and to affix the Surety's corporate seal hereunder, as evidenced by the attached power of attorney.

IN WITNESS WHEREOF, this instrument is SIGNED AND SEALED this ____ day of ____, 20__.

PRINCIPAL/BIDDER:

For Bidder: _____

Signature: _____

(SEAL)

Name and Title: _____

Address: _____

SURETY:

Attorney in Fact: _____

Signature: _____

(SEAL)

Name and Title: _____

Address: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

STATE OF _____

COUNTY OF _____

I hereby certify that I am the attorney-in-fact of _____, a [*insert entity type*], which is the surety in the foregoing bond, and that I am authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney dated _____ and attached hereto, and on behalf of the Surety, acknowledge the foregoing bond before me as the above Surety's act and deed.

Given under my hand this _____ day of _____.

ATTORNEY-IN-FACT

PRINT NAME

(NOTARY SEAL)

APPENDIX E
REQUIRED FINANCIAL INFORMATION

- A. Description of ownership and proposed financing arrangements, including the expected percentage of debt and equity capital that the bidder has committed to secure.
- B. Annual reports for the past three (3) years and any Form 10-K and 10-Q filings since the period covered in the last annual report. If these documents are not available, then audited financial statements for the last three (3) years will be accepted. All financial statements, annual reports, and other large documents may be referenced via a website address. If a bidder has not been in operation for three (3) years, please provide the above information, as applicable, since the commencement of operation.
- C. Dunn and Bradstreet identification number.
- D. Documentation of the bidder's (or parent's if applicable) credit ratings from S&P, Moody's, or Fitch rating services, if rated.
- E. Details related to its banking relationships or liquidity.
- F. Description of plans for acquiring the necessary funds for developing and operating the Facility, including a discussion of the Facility's legal ownership structure, the expected percentage of debt and equity capital that the bidder has committed to secure, and the identity and credit rating or other financial information indicative of the financial strength of firms that are likely to provide such financing.
- G. Any additional documentation needed to determine the bidder's financial strength and the strength of any corporate parents.

APPENDIX F
SAMPLE SCORING SHEET

Bid Scoring Categories	% of Bid Score	Description	Individual Categories	Maximum Scoring	Bid Score	Section Score
1. Economic Score	50%	Includes fixed and variable bid costs	The price score will be calculated on the basis of the bid's projected total cost per MWh	500		500
2. Development Risk	30%	Includes development milestones, developer experience, financing plans, mitigation of panel supply risk, and interconnection cost reallocation risk	-Completion of major project milestones -Number of MW of solar facilities completed, number of projects completed, experience of principal team members -Appendix E financial information -Evidence of contract provisions with panel supplier that mitigate supply chain risk -Anticipated COD and risk of significant increase in interconnection cost reallocation	75 50 25 50 100		300
3. Technology Risk	15%	Evidence of equipment designed to meet specifications	-Alignment with specifications (for UOT) - Use of proven technology/suppliers (for PPA) - Panel efficiency/technology (for PPA)	150 or 100 50		150
4. Social Objectives and Environmental Factors	5%	Diverse business Environmental compliance and practices	-At least 51% of venture is owned by eligible minority -Evidence of compliance, permitting, and other stewardship practices	25 25		50
Total Score	100%			1,000		

APPENDIX G
RECOMMENDATIONS FOR ESTABLISHING NATIVE POLLINATOR HABITAT ON
SOLAR FARMS IN NORTH CAROLINA

[See attached document]

APPENDIX H
APPROVED VENDORS LIST

[See attached document]

APPENDIX I
ASSET ACQUISITION PVSYST GUIDANCE

[See attached document]

APPENDIX J
FORM ASSET ACQUISITION LETTER OF INTENT

[See attached document]

APPENDIX K
FORM ASSET PURCHASE AGREEMENT

[See attached document]

APPENDIX L
FORM EPC AGREEMENT

[See attached document]

APPENDIX M
FORM BUILD TRANSFER AGREEMENT

[See attached document]

APPENDIX N
NOTICE OF INTENT TO RESPOND FORM

[See attached document]

Docket No. E-2, Sub 1297
Docket No. E-7, Sub 1268

**Redline Version
of the
2022 Solar Procurement
Request for Proposals
for
New Solar Resources
from the
June 1, 2022 Version**

DUKE ENERGY CAROLINAS, LLC
DUKE ENERGY PROGRESS, LLC

**2022 SOLAR
PROCUREMENT PROGRAM**

Request for Proposals for New Solar Resources

Dated: ~~TBD/2022~~6/20/2022
Proposals Due: ~~07/15/2022~~07/22/2022

TABLE OF CONTENTS

	Page
I. PROGRAM OVERVIEW	1
II. SOLAR RESOURCES TO BE PROCURED IN 2022 SP PROGRAM	1
A. FACILITY REQUIREMENTS	3
III. PROPOSAL TRACKS	4
A. UTILITY OWNERSHIP TRACK PROPOSALS	5
B. CONTROLLABLE PPA TRACK PROPOSALS	6
IV. RFP PROCESS	7
A. INDEPENDENT EVALUATOR	7
B. RFP ACCESS AND INSTRUCTIONS	8
C. 2022 SP PROGRAM RFP SCHEDULE	8
D. UTILITY OWNERSHIP TEAM <u>AND BID REFRESH SUB-TEAM</u> <u>SEPARATION</u>	9
E. CONFIDENTIALITY	10 11
F. PROPOSAL SIZE FLEXIBILITY	11
G. MARKET PARTICIPANTS AND PROPOSAL SPONSORS	11 12
H. PROPOSAL FEES	11 12
I. STEP 2 PROPOSAL SECURITY	12
V. PROPOSAL PRICING	13
A. PPA PROPOSAL PRICING	13
B. UTILITY OWNERSHIP PROPOSAL PRICING	14
VI. PROPOSAL EVALUATION	15
A. CURE PERIOD	15 16
B. NON-ECONOMIC SCORING CRITERIA	15 16
C. STEP 1	17
D. STEP 2	19
E. CONTRACTING	19 20
VII. WINNERS' FEE	20
VIII. ADDITIONAL INFORMATION	20 21
A. INTERCONNECTION TIMELINE AND PPA TERM	20 21
B. TRANSMISSION GRID LOCATIONAL GUIDANCE	21
C. PRODUCTION ESTIMATES	21 22
D. CONTROL INSTRUCTIONS IN CONTROLLABLE ppa	22
IX. DISPUTES	22 23
X. NOTICES AND RESERVATION OF RIGHTS	23

APPENDICES

Appendix A	–	FORM OF RENEWABLE POWER PURCHASE AGREEMENT
Appendix B	–	FORM, DIVERSE BUSINESSES
Appendix C	–	FORM OF LETTER OF CREDIT
Appendix D	–	FORM OF SURETY BOND
Appendix E	–	REQUIRED FINANCIAL INFORMATION
Appendix F	–	SAMPLE SCORING SHEET
Appendix G	–	RECOMMENDATIONS FOR ESTABLISHING NATIVE POLLINATOR HABITAT ON SOLAR FARMS IN NORTH CAROLINA
Appendix H	–	APPROVED VENDOR LIST
Appendix I	–	ASSET ACQUISITION PVSYST GUIDANCE
Appendix J	–	FORM ASSET ACQUISITION LETTER OF INTENT
Appendix K	–	FORM ASSET PURCHASE AGREEMENT
Appendix L	–	FORM EPC AGREEMENT
Appendix M	–	FORM BUILD TRANSFER AGREEMENT
Appendix N	–	NOTICE OF INTENT TO RESPOND FORM

I. PROGRAM OVERVIEW

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP,” and together with DEC, the “Companies” or “Duke Energy”) are issuing this 2022 solar procurement program (“2022 SP Program”) request for proposals (“RFP”) to procure new solar photovoltaic generating facility resources directly interconnected to the DEC and DEP transmission systems in North Carolina and South Carolina to reliably serve the Companies’ customers’ future energy needs.

The 22 SP Program is being implemented jointly by DEC and DEP as authorized by the North Carolina Utilities Commission (“Commission” or “NCUC”) in Docket Nos. E-2 Sub 1297 and E-7 Sub 1268.

As further discussed in Section IV.A, the Companies are utilizing an independent evaluator, Charles River Associates (“CRA” or the “IE”), to oversee this RFP and to act as the point of contact for all bidders. The IE has established a 2022 SP Program RFP website to facilitate RFP communication among Duke Energy’s bid evaluation team (“Evaluation Team”), market participant (“MP”) bidders and other interested parties: www.Duke2022SolarRFPCarolinas.com.

II. SOLAR RESOURCES TO BE PROCURED IN 2022 SP PROGRAM

The need for new solar resources to reliably serve Duke Energy’s projected customer load was identified in the Companies’ most recent Integrated Resource Plans filed with the NCUC and Public Service Commission of South Carolina (“PSCSC”), and was also identified in the Companies’ 2022 Carolinas Carbon Plan recently filed with the NCUC on May 16, 2022 in NCUC Docket No. E-100, Sub 179. In addition, large commercial and industrial customers in North Carolina and South Carolina have identified their interest in Duke Energy procuring new solar resources for potential future customer-directed voluntary renewable energy programs. New solar resources procured through this RFP may be used for future customer programs, subject to regulatory approval by the NCUC or PSCSC, as applicable.

The Companies are seeking new solar resources through this RFP to be acquired and owned and operated by DEC or DEP (“Utility Ownership Track”) or that will be owned and operated by third parties and that will sell the full output including all renewable and environmental attributes generated by the facility and delivered to DEC or DEP via the Companies’ renewable power purchase agreement (“PPA”) (“Controllable PPA Track”). The 2022 SP Program RFP is not soliciting non-solar resources and is also not seeking proposals that include energy storage systems as part of the proposed facility.

This 2022 SP Program RFP is soliciting a portfolio of approximately 750 megawatts (“MW”) of new solar resources and is specifically targeting procuring 55% (~412 MW) of Utility Ownership Track resources and 45% (~337 MW) of Controllable PPA Track resources (the “RFP Target Volume”).¹ This RFP Target Volume is based on the volume of new solar resources that Duke Energy’s Carolinas Carbon Plan economically selected as need in 2026 to be interconnected and

¹ The RFP Target Volume is a target and limited deviations may also be acceptable to achieve the least cost portfolio of differently sized resources that are bid into the RFP.

placed into service before the beginning of 2027²; however, projects dependent on system upgrades with longer construction timelines will also be eligible. The RFP Target Volume is subject to final approval by the NCUC which is anticipated to be received after the RFP is issued but on or before November 1, 2022, as part of the Carbon Plan review proceeding. In approving the RFP Target Volume, the NCUC may also order allocation targets or minimums between DEC and DEP. To ensure robust market participation in the 2022 SP Program, the Companies have established and obtained NCUC approval to procure a minimum target volume of 700³ MW of new solar resources in DEC and DEP under this 2022 Solar Program RFP (“Minimum Target Volume”).

The RFP Target Volume may also be subject to limited adjustment either or up or down depending on how actual bid prices compare to the assumed prices of solar resources in the Carolinas Carbon Plan (“Carbon Plan Solar Reference Cost”). Before selecting the portfolio of winning proposals, the Companies will calculate the weighted average cost of the total portfolio of Utility Ownership Track and PPA Track resources along with their assigned System Upgrade costs. If the weighted average cost is greater than or equal to 110% of the Carbon Plan Solar Reference Cost (the assumed cost of solar capacity, energy, and related System Upgrades used to develop the Carolinas Carbon Plan), the target volume may be decreased by as much as twenty percent (20%) (subject to 700 MW minimum target), effectively eliminating the highest cost proposals from selection in the 2022 SP Program and deferring some of the modeled procurement volume to the future.⁴ If the weighted average cost is less than or equal to 90% of the Carbon Plan Solar Reference Cost, the target volume may be increased by up to 20% above the RFP Target Volume thereby capturing more competitively priced, low cost solar resources for customers through the 2022 SP because they are less expensive than assumed in the Carolinas Carbon Plan. This volume adjustment mechanism will not reduce the volume of new solar resources to be procured below the Minimum Target Volume.

Subject to meeting all requirements of this RFP, Third-party solar developers (“Third-Party MPs”) may submit project proposals (“Proposals”) for consideration in both the Utility Ownership Track and the Controllable PPA Track. Notwithstanding that a Proposal may be submitted into both tracks, the two tracks will otherwise be evaluated separately of each other. Proposal will compete within each track, but Utility Ownership Track Proposals will not compete against PPA Track Proposals (see Section VI Proposal Evaluation below). DEC and DEP may also elect to submit project Proposals into the Utility Ownership Track. Duke Energy’s unregulated affiliates will not be submitting proposals into the 2022 SP Program RFP.

² Note that in the Carbon Plan, what is referred to as forecasted solar for 2027 refers to the quantity online by beginning-of-year 2027, and therefore is the same as the solar forecasted to come online in 2026, which is the RFP Target Volume for the 2022 SP.

³ For the avoidance of doubt, the Minimum Target Volume is intended as a floor and Duke Energy plans to procure at least 700 MW of new solar resources (~385 MW of Utility Ownership Track resources and ~315 MW of Controllable PPA Track resources) through the 2022 SP Program.

⁴ The volume adjustment mechanism is designed to enable Duke Energy to procure an overall portfolio of new solar resources that compares favorably to the Carbon Plan Solar Reference Cost. If increasing the procurement target would cause the cost of the total portfolio including the additional MW to materially exceed the Carbon Plan Solar Reference Cost then Duke Energy retains the right not to increase the procurement target.

A. FACILITY REQUIREMENTS

The 22 SP Program RFP is soliciting Proposals for new solar electric generating facilities (each a “Facility”) that meet all of the following requirements:

1. Solar PV: RFP is for new solar photovoltaic generating facility and may be either fixed panel or tracking.
2. Location: Facility must be located in the DEC or DEP North Carolina or South Carolina service territory and Facility will physically interconnect with the DEC or DEP transmission system.
3. New Resources: Placed in service after July ~~15~~22, 2022, and be capable of completing Facility construction (not completion of interconnection) within three years following the end of the contract phase (“Commercial Operation Date”).⁵ Duke Energy may decline to acquire a Facility under the Utility Ownership Track or decline to enter into a PPA with any bidder under the Controllable PPA Track if, in the opinion of Duke Energy, System Upgrades required to interconnect the Facility cannot be constructed in time to achieve Commercial Operation by November 30, 2027.
4. Interconnection: Facility must have submitted a valid interconnection request during the 2022 Definitive Interconnection System Impact Study (“DISIS”) enrollment window [01/01/2022 – 06/29/2022]⁶ or, alternatively, have a fully executed Interconnection Agreement with DEC or DEP prior to 6/6/2022 and not be in default under such Interconnection Agreement but not also having executed a PPA. MPs should note that the DISIS enrollment window closes before the 22 SP Program bid window and complete an interconnection request accordingly. MPs participating in the 2022 SP having the aforementioned fully executed Interconnection Agreement shall be solely responsible for the cost of any System Upgrades⁷ assigned to it under its Interconnection Agreement and shall bid accordingly as participation in 2022 SP will not alter any contractual obligations included in the MP’s executed Interconnection Agreement.⁸ Note that in the

⁵ For the avoidance of doubt, an MP is not required to obtain a certificate of public convenience and necessity (“CPCN”) to construct the Facility prior to submitting a Proposal, but will be required to establish a reasonable plan for obtaining all necessary permits and certificates (including a CPCN, if required) in a timely manner. Also, for the avoidance of doubt, an MP may not submit a Proposal for a Facility that has an existing off-take agreement.

⁶ The queue number is typically established within 14 days of an interconnection request being submitted. If the queue number is not available by the time the RFP proposal is submitted, the identification number from the Proposal’s interconnection request application, which is generated at the time of application submission, is also acceptable in the bid form.

⁷ System Upgrades are inclusive of Network Upgrades and any Distribution Upgrades under the North Carolina Interconnection Procedures or South Carolina Generator Interconnection Procedures, if applicable (for Controllable PPA projects). This term is intended to also represent Network Upgrades under the FERC Large Generator Interconnection Procedures, if applicable (for UOT projects).

⁸ Proposals with an executed Interconnection Agreement should note that, given recent construction and labor cost increases, the interconnection and system upgrade cost estimates in the Interconnection Agreement may be significantly understated. PPA track proposals with executed Interconnection Agreements will be responsible for

event that, during the 2022 SP evaluation process, a non-curable default occurs, or if the bidder fails to affect a timely cure of a curable default, or the relevant Interconnection Agreement is terminated, the MP shall be removed from the evaluation process and, if applicable, forfeit the Step 2 Proposal Security.

5. Environmental Matters: Facility will comply with the legal environmental standards and requirements respecting the development site identified in the Proposal, and bidder will avoid, minimize, mitigate, and as appropriate, permit and obtain any required regulatory authorization for any environmental impacts, as required under applicable federal and state law, for the Term of the PPA. As part of the Proposal, a bidder must address the status of permitting required to develop the Facility and plans to obtain all required permits with specific focus on environmental matters. Bidders are also encouraged to address how the Facility's design and operation exceeds applicable requirements and promotes environmental stewardship in the Carolinas. For Controllable PPA Track projects located in North Carolina, the Facility shall be responsible for complying with future regulations established by the Department of Environmental Quality to ensure adequate financial resources for the decommissioning of utility-scale solar projects pursuant to Section 3 of Session Law 2021-165.
6. Dispatch, Operate, and Control: All Facilities procured under this Program shall provide Duke Energy control rights to direct the operation of the Facility in the same manner as the Companies' owned solar resources. For Controllable PPA facilities, DEC has the right to curtail energy from the Facility up to five percent (5%) of the Facility's annual energy production and DEP has the right to curtail energy from the Facility up to ten percent (10%) of the Facility's annual energy production, without compensation to the Facility owner for non-emergency purposes. A Facility must be compliant with applicable DEC/DEP Facility Connection Requirements.
7. Other Facility Requirements: Additional Facility requirements are identified in Section III depending on whether the Facility is being submitted into the Utility Ownership or Controllable PPA Proposal Track.

III. PROPOSAL TRACKS

Proposals may be submitted under the Utility Ownership Track or Controllable PPA Track (or both):

Proposal Type	Proposal Structure
Utility Ownership Track	Market Participant (third party or DEC or DEP) offers full ownership of the Facility. Utility Ownership Track Proposals shall be submitted as one of the following: (a)

_____ funding all interconnection costs. Please refer to the Standard Interconnection Costs document on the RFP website for updated cost information to inform bid pricing. .

	Asset Transfer , (b) Asset Transfer Plus EPC , (c)Build-Own-Transfer , or (d) Utility Self-Developed.
Controllable PPA Track	Levelized (non-escalating) payments for full output of Facility (capacity, energy, and environmental and renewable attributes) in \$/MWh terms for 25 years from the commercial operation date. The pro forma PPA is attached as Appendix A .

A. UTILITY OWNERSHIP TRACK PROPOSALS

Proposals for Facilities in the Utility Ownership Track must also meet all of the following:

- Sized over 20 MW (based on the interconnection request). A Facility must have a single point of interconnection (“POI”) to interconnect with the DEC or DEP transmission system
- Be designed to meet Duke Energy’s design criteria (see **Appendix L** EPC Agreement exhibits).
- Equipment must be sourced from approved vendors (see **Appendix H** Approved Vendor List).

Utility Ownership Track is comprised of both utility self-developed and Asset Acquisition proposals. Asset Acquisition Proposals (as defined below) include Asset Transfer, Asset Transfer Plus EPC and Build-Own-Transfer Proposal categories. Utility Ownership Track Proposals shall be submitted as one of the following:

- (a) **Asset Transfer:** whereby the third party MP is proposing to sell a fully developed project and is responsible for, but not limited to, project siting, land control, development, site investigation, surveying, title work, permitting, limited engineering, and all interconnection studies. The parties would enter into an Asset Purchase Agreement (“APA”) (provided as **Appendix K**) in which the developed project assigns or transfers all assets, rights, etc. to DEC/DEP upon satisfaction of all development and closing conditions, which generally occurs prior to the start of construction. Duke Energy is then responsible for final engineering, procurement, and construction of the Facility. The MP sponsoring the Proposal is responsible for executing and maintaining the Facility’s interconnection agreement until the point which it is assigned to DEC or DEP at APA closing. The developer shall use an inverter supplier from Duke Energy’s Approved Vendors List (“AVL”) on the interconnection application and studies.⁹
- (b) **Asset Transfer Plus EPC:** whereby the Third Party MP is proposing to sell a fully developed project and is responsible for, but not limited to, project siting, land

control, development, site investigation, surveying, title work, permitting, engineering, all interconnection studies and all procurement and construction of the Facility pursuant to an Engineering, Procurement and Construction (“EPC”) Agreement (provided as **Appendix L**). Duke Energy and the Proposal sponsor would enter into an APA in which the developed project assigns or transfers all assets, rights, etc. to DEC/DEP upon satisfaction of all development and closing conditions, which generally occurs prior to the start of construction. The parties also enter into an EPC Agreement in which the MP is responsible for final engineering, procurement, and construction of the Facility. The Facility must comply with Duke Energy’s design criteria (see **Appendix L** EPC Agreement exhibits) and AVL. The MP Proposal sponsor is responsible for executing and maintaining the Facility’s interconnection agreement until the point which it is assigned to DEC or DEP at APA closing.

- (c) **Build-Own-Transfer (“BOT”)**: whereby the third party MP is proposing to sell a fully developed and constructed, turn-key, Facility to DEC or DEP. The MP is responsible for all project development activities, including but not limited to, project siting, land control, development, site investigation, surveying, title work, permitting, engineering and all interconnection studies. The parties would enter into a Build Transfer Agreement (“BTA”) (provided as **Appendix M**) in which the MP is responsible for all development scope, engineering, procurement, and construction of the Facility. The Facility must comply with Duke Energy’s design criteria (see EPC Agreement exhibits) and AVL. The MP is responsible for executing and maintaining the Facility’s interconnection agreement until the point which it is assigned to DEC or DEP at BTA closing, upon satisfaction of closing conditions, which is generally between mechanical completion and placed in service milestones.
- (d) **Utility Self-Developed**: utility self-developed facilities are defined as facilities that are originated or developed by Duke Energy whereby DEC or DEP is responsible for all project siting, development, permitting, engineering, procurement, and construction activities. The Duke Energy Utility Ownership Team will submit any Utility Self-Developed Proposals into the RFP in advance of the Proposal due date as described in section IV.D. Proposals shall include all relevant information required for the Duke Energy Evaluation Team and the IE to reasonably compare self-developed facilities to other Third-Party MP-sponsored Utility Ownership Track Proposals. Utility Self-Developed Proposals will be bid using the same templates, forms, and pricing requirements applicable to MP Proposals for Utility Ownership Track. Utility Self-Developed Proposals will meet the same requirements as Proposals submitted by Third-Party MPs.

B. CONTROLLABLE PPA TRACK PROPOSALS

Proposals in the Controllable PPA Track must also meet all of the following:

- Sized over 20 MW and under 80 MW (based on the interconnection request). A Facility must have a single POI to interconnect with the DEC or DEP transmission system. A

bidder may not aggregate facilities (i.e., cannot combine projects located on different sites or on the same site with a different POI to meet the minimum size requirement).

- Commit to sell 100% of its renewable electrical energy, capacity, and all environmental and renewable attributes to DEC or DEP for the solicited twenty-five (25) year term of the renewable PPA. Bidders are to provide a Profile(s) for each bid that begins on the Facility's proposed Commercial Operation Date. Duke Energy will not accept a bid that constitutes partial output from a Facility. A bid must represent the full output of the Facility, which is the full capability of the Facility.
- Have submitted Form 556 to the Federal Energy Regulatory Commission on or before the date of submission of the Proposal to obtain qualifying facility ("QF") certification.
- Bidders submitting Controllable PPA Track proposals should submit a state-jurisdictional interconnection request under the North Carolina Interconnection Procedures or South Carolina Generator Interconnection Procedures, as applicable.

The 2022 SP Program is requesting only a single twenty-five (25) year term of Controllable PPA. All PPA Proposals must meet the technical specifications set forth in the PPA, as determined by the IE and the Duke Evaluation Team. The pro forma PPA is provided as **Appendix A**. After closure of the RFP comment period and issuance of the RFP, the pro forma PPA is not subject to negotiation or adjustment for purposes of the 2022 Solar RFP.

IV. RFP PROCESS

A. INDEPENDENT EVALUATOR

The Companies have retained CRA to act as IE for the 2022 SP RFP. The IE serves to maintain transparency and fairness in the RFP process, which helps to prevent claims of bidder favoritism in the evaluation and selection of winning projects. The scope of CRA's responsibilities were presented to the NCUC as Attachment 2 to Duke Energy's March 14, 2022 Petition for Authorization of the 2022 SP Program in Docket Nos. E-2 Sub 1297 and E-7 Sub 1268, and generally include (i) administering the RFP pre-solicitation process and evaluating the RFP evaluation methodology and bid documents; (ii) managing the 2022 SP Program RFP website ("IE RFP Website") and interfacing with MPs and other interested parties; (iii) monitoring Duke Energy Evaluation Team to ensure fairness and transparency in the bid evaluation process; (iv) providing reports on the final draft RFP and final RFP results; (v) engaging with the Public Staff-North Carolina Utilities Commission and South Carolina Office of Regulatory Staff, as requested; and (vi) utilizing the 2022 SP Proposal evaluation methodology to evaluate all Proposals in accordance with the evaluation process established and described in Section VI to ensure that all Proposals are treated equitably throughout the RFP.

The IE is intended to be the single point of contact for bidders and interested parties related to the 2022 SP Program RFP. In no instance may a bidder or interested party contact any member of the Evaluation Team to discuss any substantive issue related to the RFP, the RFP documents, the RFP process, the bid evaluation process or any subjects related to this 2022 SP RFP. All such inquiries are to be directed to the IE, through the IE RFP Website or using the IE's email address and the IE

may arrange a discussion between the Duke Evaluation Team and bidder. The IE shall participate in any such discussion between a bidder and the Duke Evaluation Team. Any breach of this requirement may result in bid disqualification.

B. RFP ACCESS AND INSTRUCTIONS

CRA hosts a website ("IE RFP Website") that serves as the required vehicle for all RFP communications. Respondents and interested parties must be registered on the IE RFP Website to access further information related to the RFP. The IE RFP Website may be accessed at www.Duke2022SolarRFPCarolinas.com.

Registered parties may submit questions concerning the RFP on the "Submit Questions" page of the IE RFP Website. The IE will anonymize the questions as necessary before forwarding them to Duke Energy. The responses will be sent directly to the inquirer, or an anonymized version will be posted for viewing by all persons on the "View Q&A" page of the IE RFP Website. A confidential message board will also be available to bidders in the RFP to facilitate Proposal-specific questions. After the Proposal submission date, the confidential message board or the IE's dedicated 22 SP Program e-mail address will be used should the IE, Duke Energy, or a bidder seek clarification concerning a Proposal.

Respondents who intend to submit a proposal into the 2022 SP Program RFP are strongly encouraged to also submit a non-binding Notice of Intent to Respond (NOIR) in advance of RFP issuance. The NOIR form is provided as **Appendix N**. The Companies request that completed NOIR forms be emailed to the IE at the earliest date possible but no later than 12:00 PM Eastern Daylight Time on **June 22, 2022**. There is no fee required to submit a NOIR.

Final proposals and all associated documentation must be submitted to the IE through the IE RFP Website on or before **12:00 PM EDT (Noon) on July 15~~22~~, 2022.**

C. 2022 SP PROGRAM RFP SCHEDULE

The table below presents the planned 2022 SP Program RFP schedule. The 2022 SP Program RFP schedule may be modified by Duke Energy after consultation with the IE. MPs will receive notification of any schedule changes through the IE RFP Website.

Milestone	Date ¹⁰
2022 SP Program RFP Website Goes Live	04/14/2022
Draft PPA and RFP documents posted to IE RFP Website and comment period opens	04/15/2022
Stakeholder Meeting 1 with MPs to Provide RFP Overview and Discuss RFP documents	04/18/2022
Comment period on draft RFP documents closes	04/30/2022 (extended to 05/04)

¹⁰ Dates are "projected" based on 2022 DISIS and subject to change.

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
2022 Solar Procurement Program RFP

OFFICIAL COPY

Jun 17 2022

Milestone	Date ¹⁰
Stakeholder Meeting 2 to Discuss MP feedback on RFP documents	05/13/2022
RFP Target Volume established by Carbon Plan	05/16/2022
NCUC Order authorizing 2022 SP Program	05/26/2022
IE Pre-solicitation report re: RFP documents	06/01/2022
Final RFP document and PPA filed with NCUC	06/01/2022
RFP Issued and Bid window for submission of Proposals opens	TBD <i>[pending NCUC approval]</i> <u>06/20/2022</u>
Notice of Intent to Respond due (recommended)	06/22/2022
2022 DISIS Interconnection Request Deadline	06/29/2022
Deadline for submission of Utility Self-Developed Proposals	07/14/2022
Deadline for submission of Third-Party MP-Sponsored Proposals 12:00 pm EDT (Noon)	07/15/2022 <u>07/22/2022</u>
RFP Bid Cure Period	07/16/2022 – 08/05/2022
2022 DISIS Phase 1 Study	08/29/2022 - 11/26/2022
RFP Step 1 ranking complete, invitation to Step 2 announced, Step 1 winners announced, if any	11/28/2022
Step 2 Proposal Security due for Step 2 proposals and for Step 1 winners (“Early Winners”), if any	~10 business days after invitation to Step 2 announced, 12/12/2022
Additional Proposals invited to Step 2, as needed	12/13/2022 – 12/26/2022
DISIS Customer Engagement Window closes	12/26/2022
Early Winners’ PPAs executed and Letter of Intent for UOT and acknowledgement form for self-developed	01/20/2023
DISIS Phase 2 Study	12/27/2022 - 5/25/2023
Step 2 Proposals must provide bid price refresh and may provide additional non-economic updates to IE	04/03/2023
Projected Conclusion of Step 2 and winning MPs notified	05/11/2023
End of DISIS Phase 2	05/25/2023
Projected Contracting period for PPAs and Letter of Intent execution for Utility Ownership Track	05/12/2023 – 06/14/2023
Additional winners may be selected to sign contracts by 6/24 if any winners fail to execute contracts/LOI/agreements by 6/14/23	06/15/2023 – 06/24/2023

D. UTILITY OWNERSHIP TEAM AND BID REFRESH SUB-TEAM SEPARATION

Duke Energy has established a “Utility Ownership Team” that will be responsible for (i) preparing any Duke Energy-sponsored bids for Utility Self-Developed Proposals for submission into the RFP, (ii) completing initial bid evaluation and final cost development for Asset Transfer-only bids

acceptable to Duke Energy for submission into RFP; and (iii), supporting bid evaluation of Non-Economic Scoring Criteria for Utility Ownership Track Proposals, as detailed in Section VI.B.

To ensure confidence in the fairness of the bid evaluation process, the Duke Energy Utility Ownership Team is required to submit any Utility Self-Developed Proposals no less than 24 hours before the RFP window closes and must complete bid development for any Asset Transfer-only proposals and resubmit such proposals to the IE for evaluation prior to receiving Asset Transfer plus EPC or Build-Own-Transfer proposals for Step 1 review.¹¹ If Duke Energy submits any Utility Self-Developed Proposals into the RFP, the IE will also independently evaluate and rank these Utility Ownership Track Proposals to provide transparency that Duke Energy Utility Self-Developed Proposals were fairly evaluated compared to Third Party MP's acquisition bids.

The IE will monitor all bidder communications with the Duke Energy Utility Ownership Team, which will go through the IE's email account or website messaging portal to keep record of communications in writing. If the DEC/DEP Utility Ownership Team requires phone communications with an Asset Acquisition Proposal sponsor, then the IE will participate and monitor the call/teleconference.

~~In addition, all members of the Utility Ownership Team and the Evaluation Team have been identified in writing to the IE to ensure no perception of undue advantage arises as a result of the pre-established Step 2 bid refresh described in Section VI.D, Duke Energy has established separation requirements pursuant to which (i) Utility Ownership Team members will not be involved in or responsible for the economic evaluation of any Proposals (which will be performed by the IE and the Duke Evaluation Team); and (ii) a separate Utility Bid Refresh Sub-Team has been established that will solely and exclusively be responsible for the Step 2 bid refresh for any Utility Self-Developed Proposals and Asset Transfer-only bids. Once Utility Self-Developed Proposals and Asset Transfer-only Proposals are submitted into the RFP, the Utility Bid Refresh Sub-Team shall maintain separation from the Utility Ownership Team and not have access to any Asset Transfer Plus EPC or Build-Own-Transfer Proposal information until after the RFP winners are announced. All members of the Utility Ownership Team, Utility Bid Refresh Sub-Team and the Evaluation Team will be identified in writing to the IE before the close of the bid window. All Duke Evaluation Team, Utility Ownership Team, and Utility Bid Refresh Sub-Team members are also required to execute acknowledgements prior to the close of the bid window regarding compliance with these separation requirements, which will be provided to the IE. If a Utility Self-Developed Proposal or Asset Transfer-only bid is selected as a winner in the RFP, all Utility Ownership Team members and Utility Bid Refresh Sub-Team members shall also execute acknowledgements regarding compliance with the separation requirements.~~

~~Market participants should be aware that members of the Duke Evaluation Team, the Utility Ownership Team, and the Utility Bid Refresh Team may work with each other on other projects not related to the 22 SP Program RFP, but are prohibited from discussing or disclosing, directly or indirectly through a conduit, Confidential Information with: (i) the Utility Bid Refresh Sub-Team~~

¹¹ To the extent a MP provides updated design specification information after Step 1 of the bid evaluation process, the IE may coordinate with the Duke Energy Utility Ownership team for review of such updated information.

except in accordance with the procedures outlined in this RFP (limiting such disclosures to Utility Self-Developed Proposals and Asset Transfer-only bids with involvement of IE), or (ii) any other Company employee, individual or entity without a business need to know. No transfer of an employee of the Company shall be used to circumvent this prohibition to create a conduit for the prohibited transfer of Confidential Information.

E. CONFIDENTIALITY

Each bidder is prohibited from disclosing to others the ongoing status of any bid, and the information exchanged and discussed between the bidder and Duke Energy (“Bidder Information”); provided, however, a bidder may disclose Bidder Information to the IE, the Public Staff as well as to the bidder’s affiliates’ officers, employees, consultants, attorneys, agents, bankers, accountants, and contracting parties (“Representatives”) as reasonably necessary for such bidder to participate and perform as a bidder in this RFP, or to a prospective investor, lender or purchaser of the development assets or facility bid into the RFP solely for the purposes of performing due diligence related to a potential transaction (“Potential Counterparty”); provided, further, that as a condition to any such disclosure to such Representatives or Potential Counterparty (i) the bidder must direct its Representative or Potential Counterparty not to disclose the Bidder Information, and (ii) such Representative or Potential Counterparty must be subject to a contractual obligation to maintain the confidentiality and not disclose Bidder Information. If the Representative or Potential Counterparty cannot be made subject to a contractual obligation to maintain confidentiality of the Bidder Information, the bidder must obtain Duke Energy’s prior written consent before making the disclosure.

Duke Energy and the IE will not publicly disclose the identity of MPs during the Step 1 and Step 2 evaluation process. However, at the conclusion of the Step 2 evaluation, upon selection of winning MPs, Duke Energy and/or the IE shall be permitted to publicly identify all 2022 SP participants that submit Proposals in response to any NCUC or PSCSC-directed reporting requirements. After the PPA or relevant asset acquisition agreement has been executed, Duke Energy and the IE and the winning bidder who has executed the agreement are allowed to publicly disclose the winning projects’ location, name, size, and owner/seller, subject to the terms and conditions of the Controllable PPA or applicable UOT agreements between the bidder and Duke Energy.

Duke Energy will take reasonable precautions and use reasonable efforts to protect any proprietary or Confidential Information contained in a bid, provided a bidder clearly identifies that such information is confidential on each page on which such Confidential Information appears. MPs are instructed to identify information they desire to be treated as confidential by marking each page of each document “CONFIDENTIAL.” Such information may, however, be made available under applicable state or federal law to the NCUC, PSCSC, Public Staff, Office of Regulatory Staff or other governmental authorities having appropriate jurisdiction over this RFP. Duke Energy reserves the right to release such information to the IE and such governmental authorities as needed to monitor this RFP. Under no circumstances will the Companies or the IE be liable for any damages resulting from any disclosure before, during, or after the RFP process.

F. PROPOSAL SIZE FLEXIBILITY

MPs will be permitted to identify the minimum size of the Facility (up to a 10% maximum reduction¹²) that the MP is willing to provide at the same \$/MWh price for Part A of the PPA bid (as defined in Section V.A of this RFP) or the same \$/MW_{AC} price for a Utility Ownership Track bid. For example, for a 50 MW Proposal, the MP could indicate that it is willing to deliver a Facility sized anywhere between 45-50MW for the same \$/MWh price.

G. MARKET PARTICIPANTS AND PROPOSAL SPONSORS

DEC and DEP recognize that MPs may utilize partners or sponsors (“Proposal Sponsors”) for Proposal development. Proposals that rely on Proposal Sponsors to meet RFP requirements must provide evidence that is satisfactory to the IE of a binding legal partnership or similar relationship with such Proposal Sponsor.

Historically underutilized businesses are encouraged to participate in the RFP. Duke Energy will favorably evaluate the opportunities provided to qualified and certified minority-owned and women-owned firms when selecting suppliers and contractors from which Duke Energy purchases goods and services. Duke Energy encourages its suppliers and contractors to provide an opportunity when competitively possible to qualified and certified minority and women businesses; thus, information provided with the proposal or bid which describes the Proposal Sponsor’s commitment to utilizing minority and women owned firms to fulfill this agreement will be a consideration during evaluation. The definitions to be categorized for such purposes are set forth in **Appendix B** to this RFP.

H. PROPOSAL FEES

Each MP, including DEC and DEP, is required to submit with each Proposal a non-refundable “Proposal Fee” of ten thousand dollars (\$10,000). In addition, successful MPs will be responsible for a pro-rata share of the Winners’ Fee (as hereinafter defined).

MPs electing to submit a Proposal under both Utility Ownership Track and Controllable PPA Track may submit a single Proposal Fee. Payment is due at the time of Proposal submission and must be received no later than 12:00 PM EDT (Noon) on the Proposal due date. Failure to submit the Proposal Fee will result in automatic disqualification of the Proposal from further consideration.

Proposal Fees are non-refundable and for the avoidance of doubt, will not be refunded in the case of any modification of this RFP schedule, rejection of any Proposal, or failure by a winning Third Party MP to execute a PPA.

I. STEP 2 PROPOSAL SECURITY

1. Third-Party MPs

Proposal security in the amount of \$20/kW minus the M1 security to enter DISIS Phase 1, (based on the Facility’s interconnection request capacity) must be posted by all Third-Party MPs that are

¹²The maximum reduction percentage is based on Section 1.6.1.7 of the NCIP and Attachment 1 of the SC GIP.

selected to move into Step 2 of the evaluation process (“Step 2 Proposal Security”). This Step 2 Proposal Security can be in the form of (i) cash; (ii) a surety bond; or (iii) a letter of credit (“LOC”), in each case, in a form acceptable to the Companies and issued by an entity that meets the Companies’ issuer requirements and naming DEC or DEP (as applicable) as the sole beneficiary. An issuing bank for the LOC must have a minimum credit rating of A- from S&P and A3 from Moody’s and a surety must be rated A.M. Best “A- VII” or higher. Surety bonds must be irrevocable and require payment by the surety within ten calendar days of demand. Interest will not be paid on cash deposits. An example of acceptable LOC is provided in **Appendix C** and an acceptable surety bond is provided in **Appendix D**.

It is recommended that MPs provide draft forms of Proposal Security, if not posting cash, to DEP and/or DEC through the IE prior to November 15, 2022, to allow sufficient time for the Companies to review and confirm the Proposal Security materially conforms to the forms provided in **Appendix C** and **Appendix D**, respectively. The Companies will notify the MPs once the Step 1 RFP evaluations are completed with Phase 1 interconnection cost estimates (approximately November 28, 2022) if they have been invited to formally move into the Step 2 Evaluation, at which point, the MP must post the Step 2 Proposal Security within and no later than ten (10) business days after the notification date. If a Proposal does not timely provide the Step 2 Proposal Security, then the Evaluation Team may eliminate the Proposal from the RFP and identify and invite additional replacement Proposals to be evaluated in Step 2.

2. Utility Ownership Team Self-Developed Proposal

In the case of Utility Self-Developed Proposals, the Duke Energy Utility Ownership Team will be required to acknowledge that in the event such Proposal is selected as a winner and fails to execute an acknowledgment form, an amount equal to \$20/kW minus the M1 security to enter DISIS Phase 2 will be due from the utility and will be used to reduce the Winners’ Fee assigned to other winning bidders.

3. Step 2 Proposal Security Releases

The amount of the Step 2 Proposal Security will be released (i) if the Proposal is eliminated by the Companies due to failure to meet any required RFP criteria or action; (ii) if the Proposal is not selected as a winning proposal; or (iii) if the Proposal is selected as a winning Proposal, upon completion of the contracting phase of the RFP, including execution of the PPA/Asset Acquisition Agreement and posting of security as required in the applicable agreement. DEC/DEP will be entitled to draw on the full amount of the Step 2 Proposal Security in the event that the MP (a) withdraws its Proposal during Step 2 of the Evaluation Process; or (b) if the Proposal is selected as a winning Proposal but the MP fails to execute the contract or relevant agreement (for UOT).

V. PROPOSAL PRICING

A. PPA PROPOSAL PRICING

All Controllable PPA Proposals must submit two parts to the bid price for the entire twenty-five (25) year PPA term: a levelized dollar per megawatt-hour price (known as the “Part A Price” and denominated in \$/MWh) and a levelized dollar per megawatt-hour price *per million dollars of*

system upgrades assigned (known as the “Part B Price”).¹³ The Part A Price must include all attendant project costs to achieve Commercial Operation up to the POI, including the cost to directly connect to the existing DEC/DEP transmission system (“Interconnection Facilities”). Interconnection Facilities costs at the POI will include all DEC’s/DEP’s costs to connect the Facility to the existing transmission system delivery point. The Part A Price shall not include the costs of upgrades to the transmission system beyond the POI.

The Part B Price adjuster is denominated on a \$/MWh basis for every \$1 million in System Upgrades identified in the Interconnection Agreement. The System Upgrade cost estimate (in millions of dollars) for a Proposal would be multiplied by the Proposal’s Part B Price to calculate the adder needed to be made to the Part A Price if the Proposal were to pay for all System Upgrade costs (“Contract Price Adder”). For example, if the bidder’s assumed System Upgrades cost identified in the Interconnection Agreement is \$1.50 million and the submitted Part B Price adjuster is \$1/MWh per \$1 million in costs, then the Contract Price Adder to the Part A Price would be \$1.50/MWh (\$1.50 million of upgrades x \$1/MWh).

For all Controllable PPA proposals, the MP has cost responsibility for the transfer trip scheme, which will include the cost of communications equipment required to operate the transfer trip scheme. MP-owned equipment up to the POI often includes equipment such as the generator step-up transformer (for conversion up to the interconnecting voltage level), facility side generator breaker (as needed), and all station service equipment. Utility-owned equipment typically includes metering, protective equipment, relays, and other new electrical infrastructure and specific configurations for transmission connections as discussed in more detail below. System Upgrade costs will be identified in the DISIS cluster process (unless the Proposal has an existing Interconnection Agreement). Any costs from Affected System Studies and network upgrades for Affected Systems will be borne by the bidder.

MPs with executed Interconnection Agreements will be responsible for all direct interconnection and System Upgrade costs in accordance with the terms of the Interconnection Agreement. Such proposals will only be required to submit a Part A Price and will not be eligible for a Part B Price adjustment, and may wish to incorporate adjustments to the interconnection costs estimated in their executed Interconnection Agreement when establishing their bid price. A document of updated Standard Interconnection Cost Estimates is available on the RFP website.

As explained in VI.D. (“Step 2”) below, PPA Track proposals in Step 2 will also be required to submit a refreshed Part A Price (not to exceed the original Part A Price), on or about April 3rd, 2023 and may also provide updates regarding non-economic factors to the IE at that time.

B. UTILITY OWNERSHIP PROPOSAL PRICING

¹³ Section X reserves Duke Energy’s rights to modify or amend the RFP in the future should such amendment be in the best interest of Duke Energy’s customers. Duke Energy has identified for MPs during the pre-solicitation process that the Companies plan to evaluate whether to require MPs to submit a mandatory Part A Second Price in the event that a change in Federal law provides enhanced tax incentives prior to the execution of the PPA.

Utility Self-Developed Proposals shall include all costs to develop, construct and operate the facility and submit all pricing details as required in the bid submittal form.

MPs submitting Asset Transfer Proposals shall submit a fixed price to sell the fully developed project to DEC or DEP. The Duke Energy Utility Ownership Team will then estimate and provide the IE with the remaining costs to construct and operate the facility and submit all pricing details as required in the submittal form. Price, payment terms and scope will be memorialized by executing a Letter of Intent (“**LOI**”) (provided as **Appendix J**) during the 30 days after the winners are announced. The parties will then execute the APA.

MPs submitting Asset Transfer Plus EPC Proposals shall submit a fixed price to sell the fully developed project to the Utility along with a fixed price EPC contract price. The Duke Energy Utility Ownership Team will then estimate and provide the IE with its costs to oversee construction and operate the facility and submit all pricing details as required in the submittal form. Price, payment terms and scope will be memorialized by executing a LOI during the contracting period. The parties will then execute the APA and EPC Agreement.

MPs submitting BOT Proposals shall submit a fixed price to sell the fully developed and constructed turn-key project to the Utility. The Duke Energy Utility Ownership Team will then estimate and provide the IE with its costs to oversee construction and operate the facility and submit all pricing details as required in the submittal form. Price, payment terms and scope will be memorialized by executing a LOI during the contracting period. The parties will then execute the BTA.

All Asset Acquisition Proposals shall provide the requested cost details related to real estate costs (lease expenses, land acquisition, etc.), as required in the bid submittal form.

All Asset Acquisition Proposal pricing shall be inclusive of all interconnection study costs (but should exclude any accounting true ups for study costs which shall remain with the MP) and costs of executing and maintaining the Interconnection Agreement until the agreement is assigned to DEC/DEP at definitive agreement closing. All Utility Ownership Track Proposals are required to ultimately have a federal jurisdictional interconnection agreement. After assignment of the Interconnection Agreement to DEC/DEP, MP shall have no continuing obligations under the Interconnection Agreement and DEC/DEP shall work directly with the Transmission Provider to cause the release or cancellation of security previously provided by MP under the original Interconnection Agreement.

For proposals in DISIS (and not those with an executed Interconnection Agreement), the costs of Network Upgrades should not be incorporated in the MP’s Utility Ownership Track Proposal price. Network Upgrade costs will be identified from DISIS Phase 1 and Phase 2 cost estimates or in the executed Interconnection Agreement, if applicable. However, BOT and certain Asset Transfer Plus EPC proposals (dependent on timing of transfer) may be required to fund the Network Upgrades initially but will be reimbursed for such upgrades by DEC or DEP in accordance with the Asset Acquisition Agreement. More details are available in the UOT term sheets in **Appendix J**.

Form APA, EPC Agreement, BTA, exhibits, and the AVL are provided as appendix material to this RFP.

As explained in VI.D. (“Step 2”) below, Utility Ownership Track proposals in Step 2 will also be required to submit a refreshed bid price (not to exceed the original bid price), on or about April 3rd, 2023 and may also provide updates regarding non-economic factors to the IE at that time.

VI. PROPOSAL EVALUATION

A. CURE PERIOD

Proposals will be evaluated by the Duke Evaluation Team and the IE in accordance with the evaluation process set forth herein. During initial Step 1 evaluation, the IE may allow a MP an opportunity to modify or clarify its proposal to cure a non-conformance or non-substantive deficiency that would otherwise require elimination of the Proposal.¹⁴ The IE will provide the MP with written notice of the deficiency and the MP shall then have five (5) business days after receiving the written notice to cure the deficiency, where failure to cure the deficiency shall result in withdrawal of the Proposal from further consideration. Proposal Fees for a Proposal that fails to timely cure any deficiency identified by the IE shall not be returned and Proposals found by the IE to be non-conforming will not be evaluated.

B. NON-ECONOMIC SCORING CRITERIA

The following non-economic criteria will be evaluated for each Proposal and scored in accordance with the scoring sheet included as Appendix F. Proposals invited to Step 2 may update the IE with additional non-economic information on or about April 3, 2023 to include the new information in their Step 2 ranking.

1. Facility Permitting

MPs should disclose all permits that will have to be obtained and the status of each permit along with a timeline for the completion of all permits that relate to the Proposal. Site evaluation and studies conducted to date, as well as a timeline for completion of these studies, should be included in the Proposal.

2. Financing Experience

Each Proposal should describe the plans for acquiring the necessary funds for developing, constructing, and operating the Facility, as applicable. Such plans should include a discussion of the Facility’s legal ownership structure and the expected sources and types of capital that the MP has committed to secure. If available, letters of interest or letters of commitment from such financial partners or key sources of funding should be provided.

¹⁴ MPs will not be permitted to change pricing after the bid submission closes on July ~~15~~22, 2022 unless they are invited to Step 2 and reduce their price in the bid refresh.

For PPA Proposals, MPs must be able to provide evidence of at least one recent successful facility financing completed of comparable size to the Proposal submitted within the last five (5) years.

MPs must provide the financial and credit information set forth in **Appendix E**.

3. Technical Development and Operational Experience

In general, an MP must show experience in developing and operating renewable facilities of comparable size and technology as the Facility submitted in the Proposal. More specifically, an MP must:

- In the case of PPA proposals, have developed and reached operation or operated a renewable energy project or portfolio of projects >50 MW AC or 3x the nameplate capacity of the Proposal, whichever is less;
- In the case of PPA and Utility Ownership Track Proposals, have completed or directly managed the completion of the development, engineering, equipment procurement, and construction of >50 MW or 3x the nameplate capacity of the Proposal, whichever is greater, of solar facilities, including at least one project of comparable size to the proposed facility within the United States or Canada.

Each bidder must also describe the experience of the principal members of its project team. Proposals should include information on who will be responsible for design, siting, permitting, financing, construction, and on-going operation and maintenance of the Facility, if applicable and known. Each member that will lead key aspects of the project should have experience in leading those tasks on previous projects that are similar to the proposed Facility.

4. Historically Underutilized Businesses

Historically underutilized businesses meeting the requirements set forth in **Appendix B** will be scored in accordance with the score sheet.

5. Environmental Considerations

MPs should provide plans for meeting all environmental requirements. They should provide relevant documents or assessments regarding environmental due diligence and permitting, plans for decommissioning, and any work or results on completed environmental assessments. MPs may consider following the “Solar Site Pollinator Habitat Planning & Assessment Form” provided in Appendix G. Projects that are implementing a plan to include plants to attract pollinators should include a description of the plan. Projects that have established an end-of-life decommissioning plan should make note of such plans. Projects located in North Carolina shall be responsible for complying with future regulations established Department of Environmental Quality to ensure adequate financial resources for the decommissioning of utility-scale solar projects pursuant to Section 3 of Session Law 2021-165. Any expense incurred to comply with the requirements will be the responsibility of the MP and neither the Proposal pricing nor PPA pricing will be revised to accommodate any expense.

C. STEP 1

In Step 1 of the evaluation process, the IE and Duke Evaluation Team will perform the initial ranking of Proposals based on a combination of economic and non-economic criteria. Each conforming Controllable PPA Track Proposal will be evaluated on its levelized cost of energy (“LCOE”) over the twenty-five (25) year analysis period on a \$/MWh basis using the utility allowed weighted average cost of capital to arrive at the LCOE (“25-year NPV Analysis”). The evaluation will be conducted on a \$/MWh basis and therefore will not favor a Proposal based on Facility size. For PPA Proposals, the cost of the Proposal is determined by taking the MP-submitted \$/MWh rate and applying that rate to the Facility’s projected output (8760 hours x 25 years (accounting for degradation)). The energy forecasted to be produced is based on the project-specific information included in the bid.

For Utility Ownership Track Proposals, the Proposal LCOE will be derived by taking the annual facility Cost of Service Revenue Requirement and applying it to the facility’s projected annual output over the life of the asset, which is anticipated to be 30 years. A single \$/MWh rate will be derived using the utility allowed weighted average cost of capital.¹⁵

All proposals must include a set of 8760 hourly output projections for each of the 25 years of the PPA term and the 30 years for utility owned. Proposals must be accompanied by PVSyst inputs/outputs and supporting workpapers and calculations demonstrating the basis for the energy profiles proposed. MPs submitting an Asset Acquisition Proposal shall prepare the initial PVSyst model in accordance with the guidance provided as **Appendix I**.¹⁶

As part of the Step 1 evaluation process, Duke and the IE will review the Part B Price and compare it to the utility revenue requirement of System Upgrades on a \$/MWh per million dollars for each Proposal. Whichever option is lower in cost to customers will be the option selected for assessing how the estimated System Upgrade costs are added to the Part A Price to come up with a total cost to customers and compare it to other Proposals’ costs to customers. For the avoidance of doubt, Duke Energy will select the System Upgrade payment mechanism which results in the lowest cost for customers (either paid through the bidder using the Part B Price or paid through the utility using the revenue requirement) on a proposal-by-proposal basis.

All compliant Proposals will be ranked in order of the Proposal’s LCOE per track. The non-economic criteria specified in Section VI.B. will also be evaluated by the IE and Duke Evaluation Team and scored in accordance with the scoring sheet attached hereto as **Appendix F**, which has been developed by the IE and Duke and sets forth the weighting the IE and Duke will use in determining the Step 1 ranking of all Proposals. During the RFP Step 1 evaluation, the IE and Duke Evaluation Team will receive cost information from the DEC/DEP DISIS Phase 1 System Upgrade estimates, including interdependencies within Phase 1 and interdependencies with prior-queued projects and will factor those results into the RFP Step 1 evaluation process. The Duke Evaluation Team and IE will discuss and evaluate the risk of System Upgrade cost re-allocation

¹⁵ For UOT Proposals with executed Interconnection Agreements, the IE and Duke Evaluation Team may appropriately escalate the Interconnection Agreement cost estimates to better compare the Proposal’s cost estimates to DISIS Study Proposal interconnection cost estimates that are created from the 2022 DISIS Study Process.

¹⁶ SolCast is Duke’s preferred irradiance source, but the Companies will accept other data sources.

from interdependencies and consider the lowest cost and most stable overall portfolio of projects accounting for shared cost allocation and project interdependency risk, and not just the individual rank orders. At the conclusion of Step 1 and after consulting with the IE, the Duke Evaluation team will select and invite Proposal projects forward to the Step 2 RFP evaluation.

The Duke Evaluation Team may announce some proposals to be winners at the conclusion of Step 1 if they meet certain criteria to provide reasonable assurance that they are among the most competitive proposals (“Early Winners”). Eligible Early Winners can be Utility Ownership Track and/or Controllable PPA Track Proposals and may include projects participating in DISIS as well as projects that have an executed Interconnection Agreement. A Proposal must meet all of the following criteria to be eligible for an award at the conclusion of Step 1:

- Proposal shall have no contingent or dependent network upgrades with any other generator that has not executed an IA.
- Proposal shall not be flagged for an Affected System notification in Phase 1 Power Flow Study
- Proposals must place in the most competitive quartile of projects (inclusive of system upgrades) by number of projects (not by MW)
- The sum total of the MW of the projects that are selected as winners after the Phase 1 Power Flow Study shall not be more than 30% of the total target capacity sought to be procured in the 2022 SP RFP (before volumetric adjustments).

Proposals selected as Early Winners must post proposal security equal to the Step 2 Proposal Security required in Section IV.I by 12/12/2022 in order to confirm readiness for DISIS Phase 2. Proposals selected as Early Winners that timely post security will meet the DISIS Phase 2 readiness requirements through their selection in the RFP (as will all proposals invited to Step 2 that timely post security). Those proposals will proceed to executing their PPA or relevant agreement/Letter of Intent by January 20, 2023.

D. STEP 2

For Proposals invited to Step 2, the Step 2 Proposal Security will be due by 12/12/2022 in order to confirm readiness for DISIS Phase 2. Proposals invited to Step 2 of the RFP will meet the DISIS Phase 2 readiness requirements through their participation in the RFP. However, proposals that withdraw from the interconnection cluster for any reason are still subject to the withdrawal process, including any applicable withdrawal penalties, under the applicable interconnection procedures.¹⁷ If a Proposal invited to Step 2 does not post their Proposal Security by 12/12/2022, the Duke evaluation team may terminate consideration of the Proposal and may alternatively invite additional Proposals forward to Step 2.

In order to provide the most competitive prices to customers and use the most recent market conditions to inform the bid prices, all proposals in Step 2 (both Controllable PPA track and Utility

¹⁷ See NCIP Section 6.3, SC GIP Appendix Duke CS Section 5.7, and FERC LGIP 4.7, as applicable.

Ownership Track) will be subject to a bid refresh on or about April 3rd, 2023. The refreshed bid prices will be required for all proposals in Step 2; Controllable PPA Track proposals are required to refresh the “Part A Price” of the bid and may not exceed the initial “Part A Price”, and Utility Ownership Track bids must refresh their overall price and may not exceed their initial bid price. The Duke Energy Utility Ownership Team is required to submit any bid refreshes for Utility Self-Developed Proposals no less than 24 hours before bid refresh pricing is due for other MPs.

In Step 2 of the evaluation process, the Duke Evaluation Team will utilize the refreshed bid prices as well as updated interconnection information developed in DISIS Phase 2 including network upgrade costs, allocation, and interdependencies with other DISIS facilities or with prior-queued projects. In DISIS Phase 2, the Evaluation Team will also determine if an Affected System notification is required (to alert the Affected System to review the facility for a potential Affected System Study). If a power flow restudy is needed in Phase 2, this determination will be made after the power flow restudy is complete, and if a power flow restudy is not needed, this determination can be made earlier in the Phase 2 window. The bidder is responsible for payment of all system upgrades identified in Affected System Studies and the Affected System may or may not be required to reimburse the generator for upgrades to its system. At the end of the Step 2 evaluation, the IE shall review the assigned System Upgrade costs for the Step 2 projects and the IE will provide feedback on the qualitative risk or System Upgrade cost reallocation as it relates to the final selection of winners.¹⁸

Selected Proposals shall be notified of their status on or about May 11, 2023, subject to completion of DISIS Phase 2 cost estimates and allocations.

E. CONTRACTING

After initial proposal selection is finalized by the Duke evaluation team and announced by the IE, the winning Controllable PPA Track bidders will have 30 calendar days to execute the PPAs. The Utility Ownership Track acquisition proposals will have 30 calendar days to execute a LOI (provided as Appendix J), with a target date of fully executed asset acquisition agreements by December 29, 2023. For Utility Self-Developed Proposals, the utility will execute an acknowledgement form that DEC or DEP will construct the project within 30 calendar days of the announcement of winners.

If any winners fail to execute the relevant contract or agreement in the allotted 30 calendar days after the announcement of winners, then their offer as a winner may be revoked and DEC/DEP will be entitled to draw on the full amount of the Step 2 Proposal Security. If there is a deficit in the number of MW of executed contracts/agreements to the 2022 SP Program target after the 30 day contracting window, DEC/DEP may extend offers to additional Step 2 Proposals before the end of the DISIS Customer Engagement Window (June 24, 2023) to make up for the deficit and still allow the proposal to meet DISIS readiness requirements.

If the Companies elect to have the Proposal fund the System Upgrade costs associated with the Facility under the Interconnection Agreement, this selection will be announced at the conclusion

¹⁸~~Note to MPs: Duke Energy is seeking feedback during the April 18 stakeholder meeting on Affected System studies and alignment with the DISIS and RFP timelines.~~

of Step 2 with the announcement of winners. For such proposals, the Contract Price will be adjusted to include both Part A and the Contract Price Adder (which is Part B multiplied by the millions of dollars of system upgrades in the Interconnection Agreement). In order to effectuate the Contract Price Adder, the Proposal shall provide written notice to the Companies together with a copy of the executed Interconnection Agreement documenting that the system upgrade costs are being charged to the Proposal, as soon as reasonably possible after the execution of the Interconnection Agreement.

VII. WINNERS' FEE

To the extent that Proposal Fees are not sufficient to cover all IE costs, the Companies may assign a "Winners' Fee" to winning Proposals that execute an agreement with the Companies for the 2022 SP in order to satisfy the cost of the RFP. The Winners' Fee is calculated for each winning bid as the pro rata share for any remaining IE costs not covered by the Proposal Fees. Each winning Proposal's Winners' Fee will be determined upon conclusion of the RFP once the IE costs are known and shall be paid by each winning Proposal to DEC or DEP, as appropriate, within thirty calendar days of invoice receipt. Winners' Fees will be allocated among all winning Proposals (including Early Winners) on a pro-rata per MW basis and will be non-refundable. The total amount of the Winners' Fees assigned to all selected Proposals shall not exceed \$1 million.

VIII. ADDITIONAL INFORMATION

A. INTERCONNECTION TIMELINE AND PPA TERM

For transmission-connected projects, commercial operation of the Interconnection Facilities is anticipated to be 26-32 months after execution of an Interconnection Agreement. However, it is important to note that the amount of time required for construction of Interconnection Facilities for transmission-connected projects can be substantially impacted by the number of non-22 SP projects that execute Interconnection Agreements prior to 22 SP winning Proposals or the scope of the System Upgrades assigned to other Interconnection Customers in the DISIS Cluster. There may also be contingent transmission upgrades associated with the Transmission Provider's "Ten Year Transmission Addition Plan" that could impact a project's in-service date.

For the avoidance of doubt, the term of all PPAs shall be twenty-five (25) years from the Commercial Operation Date (as that term is defined in the PPA).

B. TRANSMISSION GRID LOCATIONAL GUIDANCE

For purposes of the 22 SP Program RFP, DEC/DEP have posted grid locational guidance on the IE RFP Website 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 MPs with information regarding areas on the transmission system where System Upgrades are likely needed based upon recent transmission system studies. The RFP Documents page of the IE RFP Website includes a map and supporting documentation. A DEC and DEP list of transmission lines, substations, and deliveries in red zones is available on the

respective DEC and DEP OASIS websites¹⁹¹⁸. Studies will be required to determine the extent and cost, if any, of these System Upgrades.

Transmission areas not identified as zones of known transmission constraints may still require System Upgrades, and transmission studies will be required to determine the extent and cost, if any, of these System Upgrades.

MPs should also be aware that Duke Energy is proposing a DEC and DEP Red Zone Transmission Expansion Plan through the North Carolina Transmission Planning Collaborative²⁰¹⁹ (“NCTPC”) local transmission planning process. Stakeholder input is being solicited through the NCTPC Transmission Advisory Group (“TAG”) and MPs can obtain additional information by participating in the TAG process. If approved by the NCTPC, Duke Energy’s overall transmission expansion plan ~~would~~could be significantly affected by the Red Zone Transmission Expansion Plan, which may change the areas currently identified as “red zones” and impact the assigned costs to future generator interconnections.²⁰ Information on potential transmission upgrades identified through the NCTPC or SERTP process can be obtained through public stakeholder participation in these local and regional transmission planning processes. Information on Duke Energy’s transmission planning process and future plans to transform the DEC and DEP transmission systems can also be obtained on OASIS²¹ or by reviewing Duke Energy’s May 16, 2022 Carolinas Carbon Plan, as filed with the North Carolina Utilities Commission.²²

C. PRODUCTION ESTIMATES

All MPs shall include an 8760 hourly production profile for the first year of operation as part of their Proposal. The required production profile shall be generated in PVSyst. Production profiles should be based on energy delivered at the POI and taking into account all transformation losses to the POI, including final generation step-up transformer (GSU) transformation (Utility Ownership Track Proposals should see **Appendix I**). For example, transmission interconnected projects should include any transformational losses incurred through the GSU to the high-side of the interconnect. For transmission-connected Facilities, utility power factor requirements should also be included in determination of energy delivered to the POI²³. The production profile provided with the Proposal should not be adjusted for Daylight Savings Time.

D. CONTROL INSTRUCTIONS IN CONTROLLABLE PPA

¹⁹¹⁸ www.oasis.oati.com/duk/index.html or www.oatioasis.com/cpl, in “Generator Interconnection Information”

²⁰¹⁹ www.nctpc.org/nctpc/home.jsp

²⁰ MPs should also be aware that the NCUC’s June 10, 2022 Order Approving Request for Proposals and Pro Forma Power Purchase Agreement Subject to Amendments in Docket Nos. E-2, Sub 1297 and E-7, Sub 1268 found that it is premature to include the Red Zone Transmission Expansion Plan projects in the 2022 DISIS baseline and directed DEC and DEP not to include these projects in the 2022 DISIS baseline.

²¹ www.oasis.oati.com/duk/index.html or www.oatioasis.com/cpl

²² www.duke-energy.com/our-company/about-us/carolinas-carbon-plan at Appendix P - Transmission System Planning and Grid Transformation.

²³ DEC requires each transmission-connected Facility to be capable of delivering power to the POI within the power factor range of 0.93 lagging to 0.97 leading. DEP requires each transmission-connected Facility to be capable of delivering power to the POI within the power factor range of 0.95 lagging to 0.95 leading.

Section 8.6 to 8.10 of the pro forma PPA addresses DEC/DEP system operators' rights to issue instructions to control the renewable generating facilities procured through the 22 SP Program in the same manner as DEC's/DEP's control of the utility's own generating facilities.²⁴ 22 SP Facilities must be designed with control equipment that will facilitate full or incremental instantaneous control over the Facility in order to take any action directed by the Companies' system operators to implement or otherwise effectuate system operator instruction. General communications and controls protocols and requirements are part of the Companies' Facility Connection Requirements.²⁵ Specific detailed SCADA requirements will be provided to the facility owner during site construction and commissioning of the project.

The dispatch control entitlements are in addition to otherwise applicable system emergency condition instructions and force majeure instructions, as defined in the Controllable PPA,²⁶ and may be issued by the DEC/DEP system operator for any reason, including planning its security-constrained unit commitment and dispatch for operational efficiency (e.g., avoid taking a large unit off-line for short intra-day durations to avoid operationally excess energy) or to provide for operational flexibility for anticipated operational challenges (e.g., dispatching down facilities to reduce extreme evening ramp rates).

Section 8.9 of the pro forma Controllable PPA specifies that the uncompensated, non-force majeure/emergency curtailment (or Dispatch Down) for the 22 SP is limited to 5% DEC/10% DEP of the facility's annual expected output (specified as MWh). Any non-force majeure/emergency curtailment in excess of the 5%/10% limit will be compensated by applying the full contract price to each MWh of energy that could have been generated but was not due to the dispatch down control instruction(s). Section 8.9 and Exhibit 9 to the pro forma Controllable PPA also describe the methodology that will determine whether the dispatch control entitlement was exceeded during a given year and will be used to calculate any compensation owed to the seller under the Controllable PPA.

IX. DISPUTES

Should a dispute arise between Duke Energy and a Third Party MP relating to this RFP, the MP should provide written notice of the dispute to Duke Energy and the IE and the parties will attempt to informally resolve the dispute with the involvement of the IE. To the extent a Third Party MP seeks further recourse relating to this RFP, MPs retain the right to initiate a complaint proceeding before the NCUC. By submitting a Proposal in this RFP, MPs expressly agree to pursue any dispute relating to or arising out of this RFP (other than disputes under the exclusive jurisdiction of the Federal Energy Regulatory Commission) before the NCUC in the first instance, and not to assert that the NCUC is an improper forum for any such dispute.

²⁴ See N.C. Gen. Stat. § 62-110.8(b).

²⁵ Facility connection requirements for DEC and DEP are available on the Transmission Providers OASIS websites. DEP: https://www.oasis.oati.com/woa/docs/CPL/CPLdocs/Duke_Energy_Progress_Facility_Interconnection_Requirements_R2.pdf

DEC: https://www.oasis.oati.com/woa/docs/DUK/DUKdocs/DEC_Generator_Interconnection_Requirements_and_Locational_Guidance_T3_11_2021.pdf

²⁶ The Companies will manage dispatch control instructions and system emergency curtailments of Controllable PPA resources in accordance with the Operating Procedures filed January 30, 2018, in Docket No. E-100, Sub 148.

To the extent that a Third Party MP initiates a dispute, complaint, or seeks other further recourse relating to this RFP and such action causes additional work and billing from the IE, the IE will track those expenses. Whichever party does not prevail in the complaint or dispute will be responsible for these incremental IE expenses, and if a settlement is reached, the payment of IE expenses will be established in the settlement. Duke Energy reserves the right to require reasonable financial security or other indicia of financial commitment to fund any IE expenses resulting from such dispute or complaint.

X. NOTICES AND RESERVATION OF RIGHTS

The information contained in this 2022 SP Program RFP has been prepared solely to assist bidders in deciding whether or not to submit a Proposal. Duke Energy does not represent this information to be comprehensive or to contain all of the information that a respondent may need to consider in order to submit a Proposal. Duke Energy reserves the right to modify, supplement or withdraw this RFP at any time, whether due to changes in law or otherwise, and including by issuing one or more amendments or addenda to this RFP during this solicitation, which addenda shall become a part of this RFP.

No part of this RFP and no part of any subsequent correspondence by Duke Energy, its affiliates, or their respective employees, directors, officers, customers, agents or consultants shall be taken as providing legal, financial or other advice or as establishing a contract or contractual obligation. Contractual obligations on the part of Duke Energy will arise only if and when definitive agreements have been approved and executed by the appropriate parties having the authority to approve and enter into such agreements.

The Companies reserve the right to request from any MP information that is not explicitly detailed in this document, obtain clarification from a bidder concerning its proposal(s), conduct contract development discussions with selected respondents as well as provide data to and conduct discussions with the IE as necessary for the IE to satisfy the IE's role and responsibilities.

Duke Energy reserves the right to reject any, all or portions of any Proposal received for failure to meet any criteria set forth in this RFP or otherwise and to accept proposals other than the lowest cost Proposal subject to review by the IE and the NCUC. Duke Energy also may decline to enter into any agreement with any bidder, terminate negotiations with any bidder or abandon the RFP process in its entirety at any time, for any reason and without notice thereof. Respondents that submit Proposals agree to do so without legal recourse against the Companies, its affiliates, or their respective employees, directors, officers, customers, agents or consultants for rejection of their proposals or for failure to execute an agreement for any reason. The Companies shall not be liable to any respondent or other party in law or equity for any reason whatsoever for any acts or omissions arising out of or in connection with this RFP.

Each respondent shall be liable for all of its costs incurred to prepare, submit, respond or negotiate its Proposal and any resulting agreement and for any other activity related thereto, and the Companies shall not be responsible for any of the respondent's costs. In submitting a Proposal into this RFP, a MP agrees and accepts that nothing contained in this RFP will be construed to require or obligate Duke Energy to select any Proposal. MPs should be aware that submittals, even if marked "Confidential," may be subject to discovery and disclosure in regulatory or judicial

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
2022 Solar Procurement Program RFP

proceedings. The Companies will notify the MP in advance of any required disclosure of confidential information.

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Jun 17 2022

APPENDIX A
FORM OF RENEWABLE POWER PURCHASE AGREEMENT

[See attached document]

APPENDIX B DIVERSE BUSINESSES

As an advocate for corporate responsibility, Duke Energy excels among our utility peers in seeking and developing local and diverse businesses, as well as those with environmentally sustainable practices, through our supply chain sourcing strategy. Including Corporate Responsibility as a standard component of the sourcing process creates a standardized approach when evaluating suppliers, while maintaining flexibility based on opportunity and risk avoidance.

Diverse Supplier Designations

The following designations will be utilized in the 2022 Solar Procurement Program to qualify a Market Participant as a Historically Underutilized Business:

Designation	Description	Requirement
WBE	Women Owned Business Enterprise	At least 51% owned
MBE	Minority Owned Business	At least 51% owned
VBE	Veteran Owned Business	At least 51% owned
SDVBE	Service Disabled Veteran Owned Business	At least 51% owned
LGBTBE	Lesbian, Gay, Bisexual or Transgender (LGBT)	At least 51% owned
DBE	Disabled	At least 51% owned

Above business concerns must be at least 51% owned by one or more individuals in the diverse categories or, in the case of any publicly owned business, at least 51% of the stock is owned by individuals within the groups. In addition, the owners must control the management and daily business operations. In case of a permanent or severe disability, the spouse or caregiver of such a service-disabled veteran may control the management and daily operations.

Certification

MP's that meet one or more of the diverse supplier designations above should provide third party certification from the relevant agencies listed on the Duke Energy website at <https://www.duke-energy.com/partner-with-us/suppliers/supplier-diversity>.

APPENDIX C
FORM OF LETTER OF CREDIT

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: _____

Date: _____

Beneficiary:

Duke Energy [Carolinas/Progress], LLC
400 South Tryon Street (ST30)
Charlotte, NC 28202
Attention: Chief Risk Officer

Ladies and Gentlemen:

By the order of:

Applicant:

We hereby issue in your favor our irrevocable letter of credit No.: _____ (“Letter of Credit”) for the account of _____ (the “Applicant”) 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 [*insert date which is one year from issuance*] (the “Expiration Date”), unless terminated earlier in accordance with the provisions hereof or otherwise extended.

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.

We hereby undertake to promptly honor your drawing(s) presented in compliance with the terms of this Letter of Credit, up to the amount then available herein, in no event will payment exceed the amount then 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.

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
2022 Solar Procurement Program RFP

This Letter of Credit shall automatically terminate on the earliest of the following to occur: (i) the making by you and payment by us of the drawings in an amount equal to the maximum amount available to be made hereunder; (ii) the date we receive from you a Certificate of Expiration in the form of Annex 3 attached hereto; or (iii) the above stated Expiration Date.

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 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.

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]*

Duke Energy [Carolinas/Progress], LLC ____ (the "Beneficiary") is drawing the funds requested under this draft based on the below specified draw condition:

[check appropriate draw condition]

☐ [Legal name of bidding entity] (the "Bidder") has withdrawn its proposal in violation of the bidding rules under the Request for Proposals for the 2022 Solar Procurement Program ("RFP") which was issued by [Insert Beneficiary's name] on [insert date of RFP]; or

☐ A proposal submitted by [Legal name of bidding entity] (the "Bidder") has been selected as a winning proposal in the Request for Proposals for the 2022 Solar Procurement Program ("RFP") which was issued by [Insert Beneficiary's name] on [insert date of RFP] and Bidder has failed to execute the *[insert name of required contract]* (the "Agreement") within 90 calendar days of the closing of the RFP; or

[Legal name of bidding entity] (the "Bidder") has received a winning proposal in the Request for Proposals for the 2022 Solar Procurement program ("RFP") which was issued by [Insert Beneficiary's name] on [insert date of RFP] and has failed to meet the creditworthiness requirements under the *[insert name of required contract]* ("Agreement") or to post performance security as required under the Agreement within 5 business days of the execution of the Agreement.

Duke Energy [Carolinas/Progress], LLC

By: _____

Title: _____

ANNEX 3

FORM OF CERTIFICATE OF EXPIRATION

[Insert date of certificate]

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

Attention Standby Letter of Credit Unit

Re: Irrevocable letter of credit No. *[irrevocable standby letter of credit number]* dated *[effective date]* the "Letter of Credit."

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above referenced Letter of Credit may be cancelled without payment. Attached hereto is the referenced Letter of Credit, marked cancelled.

Duke Energy [Carolinas/Progress], LLC

By: _____

Title: _____

Cc: _____ [Bidder]

**APPENDIX D
FORM OF SURETY BOND**

SURETY BOND – 2022 SOLAR PROCUREMENT PROGRAM

COLLATERAL SECURITY PAYABLE UPON DEMAND

* * * * *

PRINCIPAL / BIDDER (Legal Name and Business Address)

<i>SURETY (Legal Name and Business Address)</i>	<i>CONTRACT NO.</i>	<i>CONTRACT DATE</i>
<i>OBLIGEE</i> Duke Energy Carolinas, LLC/Duke Energy Progress, LLC Attn: Credit Risk Manager 400 South Tryon Street (ST30) Charlotte, NC 28202	<i>SURETY BOND EFFECTIVE DATE</i>	
<i>PROPOSAL SECURITY AMOUNT</i>	<i>PENAL SUM OF BOND</i>	

KNOW ALL PERSONS BY THESE PRESENTS THAT: PRINCIPAL (herein, “Bidder”) and SURETY are held and firmly bound to [Duke Energy Carolinas, LLC/Duke Energy Progress LLC] (“Duke Energy”), a limited liability company organized and existing under the laws of the state of North Carolina, its successors and assigns in the amount of \$[insert Bond Amount] (“Proposal Security Amount”), for the payment of which the Bidder and Surety, their heirs, executors, administrators, successors and assigns are hereby jointly and severally bound.

WHEREAS, Bidder has submitted a bid proposal into Duke Energy’s Request for Proposals for the Duke Energy 2022 Solar Procurement Program (“RFP”), which was issued by Duke Energy on [_____];

WHEREAS, Duke Energy has selected Bidder’s proposal (the “Bid”) for further evaluation in Step 2 of the RFP process (such evaluation referred to herein as the “Step 2 Evaluation Process”) pursuant to the RFP;

WHEREAS, Bidder and Surety acknowledge that the RFP process will be delayed and Duke Energy will be harmed if Bidder withdraws the Bid, or if the Bid is selected as a Bid for the Step 2 Evaluation Process and the Bidder does not execute the RENEWABLE POWER

PURCHASE AGREEMENT or the ASSET PURCHASE AND SALE AGREEMENT (as applicable, the “Agreement”) associated with the RFP as requested by Duke Energy and/or fails to provide Performance Assurance as required under and as defined in the Agreement; and

WHEREAS, Bidder desires to furnish this Bond pursuant to the requirement in Section III of the RFP to provide Proposal Security for a bid selected to continue forward into the Step 2 Evaluation Process;

NOW THEREFORE, the condition of this obligation is such that if (i) Duke Energy or the Independent Administrator acting on its behalf notifies Bidder that the Bid has been eliminated from consideration in the RFP, or (ii) Duke Energy subsequently selects the Proposal as a winning Proposal under the RFP and Bidder has executed the Agreement and posted Performance Assurance as required in such Agreement, then this obligation will be null and void; otherwise it will remain in full force and effect, subject to the following additional conditions:

- a. Capitalized terms undefined herein will take the meaning or definition provided in the RFP or where indicated, the Agreement. In the event of any conflict between this Bond and the RFP, the terms of this Bond will control.
- b. If Bidder withdraws the Bid, or if Duke Energy selects the Bid as a winning Proposal and the Bidder does not execute the Agreement with Duke Energy for the Bid within 90 calendar days of the closing of the RFP or fails to meet the creditworthiness requirements or to post the performance security as required under the Agreement within five (5) business days of the execution of the Agreement, then Duke Energy will issue a demand for payment of the Proposal Security Amount to the Surety (“Demand for Payment”).
- c. Surety will, not later than ten (10) business days after delivery of a Demand for Payment to the Surety at the address provided below, pay the Proposal Security Amount to Duke Energy. Surety’s obligation for payment of the Proposal Security Amount will be deemed established regardless of the underlying causes for Bidder’s withdrawal of the Bid and irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of the Surety.
- d. Bidder and Surety acknowledge that the Proposal Security Amount represents a fair and reasonable pre-estimation of the damages due to Duke Energy under the circumstances existing as of the Surety Bond Effective Date and that such amount represents a reasonable estimate of Duke Energy’s losses in the event of (i) Bidder’s withdrawal of the Bid following its selection for further evaluation in the Step 2 Evaluation Process, or (ii) Bidder’s failure to execute the Agreement with Duke Energy for the Bid if selected as a winning Proposal or failure to provide Performance Assurance as required under the Agreement. The Proposal Security Amount will not be deemed a penalty, and the Bidder and Surety hereby waive and forfeit any right to contest the reasonableness or validity of the liquidated Proposal Security Amount. Duke Energy’s right to recover the Proposal Security Amount will in no way limit its entitlement to other non-monetary remedies to which Duke Energy may be entitled pursuant to the terms of the RFP, the Bond, or applicable law.

- e. It is hereby agreed that this obligation is effective beginning on the Surety Bond Effective Date, above, provided that, if this Bond remains in effect after one (1) year following the Surety Bond Effective Date, Bidder may cancel this Bond after such one (1) year period by giving Duke Energy at least forty-five (45) days prior written notice of the cancellation date. Such cancellation notice will be sent by certified mail or by overnight courier with tracking service to:

{Add notice info}

with copy to

Duke Energy [Carolinas/Progress], LLC
Attn: Credit Risk Manager
400 South Tryon Street (ST30)
Charlotte, NC 28202

Any obligations of the Bidder prior to any such cancellation will survive such cancellation and continue to be a liability of the Surety until paid in full by the Bidder.

This Bond is irrevocable by Surety.

- f. Within thirty (30) days following the date of any notice of cancellation of this Bond that is provided to Duke Energy under Paragraph 6, Bidder will provide to Duke Energy a replacement Bond that satisfies the requirements of Section III of the RFP in the amount of the Performance Security required for the pre-COD period. Bidder's failure to provide such replacement Bond in the required timeframe will constitute a default under this Bond and will entitle Duke Energy to issue a Demand for Payment to the Surety for the payment of the Proposal Security Amount.
- g. The Surety's liability is limited to the Proposal Security Amount ("Penal Sum of Bond"), unless suit must be brought for enforcement of the within obligations and in which case the Surety will also be liable for all costs in connection therewith, interest and reasonable attorneys' fees, including costs of and fees for appeals.
- h. Failure of the Surety to pay the Proposal Security Amount within ten (10) business days of Demand for Payment will constitute default of the Surety's obligation under the Bond and Duke Energy will be entitled to enforce against the Surety any remedy available to it.
- i. Surety, for value received, hereby stipulates and agrees that no change, modification, omission, addition or change in or to the RFP or the Agreement, and no action or failure to act by Duke Energy will in any way affect the Surety's obligation on this Bond; and Surety hereby waives notice of any and all such modifications, omissions, alterations, and additions to the terms of the RFP or the Agreement.
- j. If any part or provision of this Bond will be declared unenforceable or invalid by a court of competent jurisdiction, such determination in no way will affect the validity or enforceability of the other parts or provisions of this Bond.

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
2022 Solar Procurement Program RFP

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JUN 17 2022

- k. The undersigned Surety and Bidder are held and firmly bound for the payment of all legal costs, including reasonable attorney's fees, incurred in all or any actions or proceedings taken to enforce this Bond or the obligations created herein, or payment of any award of judgment rendered against the undersigned Surety. Nothing contained herein will be construed to obligate Duke Energy to pay any fees or expenses incurred in connection with the issuance of this Bond.
- l. All disputes relating to the execution, interpretation, construction, performance, or enforcement of the Bond and the rights and obligations thereto will be governed by the laws of, and resolved in the State and Federal courts in North Carolina. The rights and remedies of Duke Energy herein are cumulative and in addition to any and all rights and remedies that may be provided by law or equity.
- m. The undersigned Surety agent(s) represent that he/she is a true and lawful attorney-in-fact for the Surety and authorized to bind the Surety hereto and to affix the Surety's corporate seal hereunder, as evidenced by the attached power of attorney.

IN WITNESS WHEREOF, this instrument is SIGNED AND SEALED this ____ day of ____, 20__.

PRINCIPAL/BIDDER:

For Bidder: _____

Signature: _____

(SEAL)

Name and Title: _____

Address: _____

SURETY:

Attorney in Fact: _____

Signature: _____

(SEAL)

Name and Title: _____

Address: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

STATE OF _____

COUNTY OF _____

I hereby certify that I am the attorney-in-fact of _____, a [*insert entity type*], which is the surety in the foregoing bond, and that I am authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney dated _____ and attached hereto, and on behalf of the Surety, acknowledge the foregoing bond before me as the above Surety's act and deed.

Given under my hand this _____ day of _____.

ATTORNEY-IN-FACT

PRINT NAME

(NOTARY SEAL)

APPENDIX E
REQUIRED FINANCIAL INFORMATION

- A. Description of ownership and proposed financing arrangements, including the expected percentage of debt and equity capital that the bidder has committed to secure.
- B. Annual reports for the past three (3) years and any Form 10-K and 10-Q filings since the period covered in the last annual report. If these documents are not available, then audited financial statements for the last three (3) years will be accepted. All financial statements, annual reports, and other large documents may be referenced via a website address. If a bidder has not been in operation for three (3) years, please provide the above information, as applicable, since the commencement of operation.
- C. Dunn and Bradstreet identification number.
- D. Documentation of the bidder's (or parent's if applicable) credit ratings from S&P, Moody's, or Fitch rating services, if rated.
- E. Details related to its banking relationships or liquidity.
- F. Description of plans for acquiring the necessary funds for developing and operating the Facility, including a discussion of the Facility's legal ownership structure, the expected percentage of debt and equity capital that the bidder has committed to secure, and the identity and credit rating or other financial information indicative of the financial strength of firms that are likely to provide such financing.
- G. Any additional documentation needed to determine the bidder's financial strength and the strength of any corporate parents.

APPENDIX F
SAMPLE SCORING SHEET

Bid Scoring Categories	% of Bid Score	Description	Individual Categories	Maximum Scoring	Bid Score	Section Score
1. Economic Score	50%	Includes fixed and variable bid costs	The price score will be calculated on the basis of the bid's projected total cost per MWh	500		500
2. Development Risk	30%	Includes development milestones, developer experience, financing plans, mitigation of panel supply risk, and interconnection cost reallocation risk	-Completion of major project milestones -Number of MW of solar facilities completed, number of projects completed, experience of principal team members -Appendix E financial information -Evidence of contract provisions with panel supplier that mitigate supply chain risk -Anticipated COD and risk of significant increase in interconnection cost reallocation	75 50 25 50 100		300
3. Technology Risk	15%	Evidence of equipment designed to meet specifications	-Alignment with specifications (for UOT) - Use of proven technology/suppliers (for PPA) - Panel efficiency/technology (for PPA)	150 or 100 50		150
4. Social Objectives and Environmental Factors	5%	Diverse business Environmental compliance and practices	-At least 51% of venture is owned by eligible minority -Evidence of compliance, permitting, and other stewardship practices	25 25		50
Total Score	100%			1,000		

APPENDIX G
RECOMMENDATIONS FOR ESTABLISHING NATIVE POLLINATOR HABITAT ON
SOLAR FARMS IN NORTH CAROLINA

[See attached document]

APPENDIX H
APPROVED VENDORS LIST

[See attached document]

APPENDIX I
ASSET ACQUISITION PVSYST GUIDANCE

[See attached document]

APPENDIX J
FORM ASSET ACQUISITION LETTER OF INTENT

[See attached document]

APPENDIX K
FORM ASSET PURCHASE AGREEMENT

[See attached document]

APPENDIX L
FORM EPC AGREEMENT

[See attached document]

APPENDIX M
FORM BUILD TRANSFER AGREEMENT

[See attached document]

APPENDIX N
NOTICE OF INTENT TO RESPOND FORM

[See attached document]

Docket No. E-2, Sub 1297

Docket No. E-7, Sub 1268

ATTACHMENT B

**Redline and Clean Versions of
the
Proforma Controllable Power
Purchase Agreement**

Docket No. E-2, Sub 1297
Docket No. E-7, Sub 1268

Clean Version
of the
Proforma Controllable
Power Purchase Agreement

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
(HB 951 – 2022 Solar RFP)

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

Overnight Mail: 400 South Tryon Street
Mail Code: ST 26A
Charlotte, North Carolina 28202
Regular Mail: PO Box 1006
Mail Code: ST 26A
Charlotte, NC 28201-1006
Attn.: Contract Administrator
DERContracts@duke-energy.com

*With Additional Notices of Events of Default
Or Potential Event of Default to:*

Overnight Mail: 526 S. Church Street
Charlotte, North Carolina 28202
Regular Mail: P.O. Box 1321
Charlotte, North Carolina 28201-1321
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 2022 Solar 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) 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 50% or more of the voting interests in Seller or substantially all of its assets; or (b) the ultimate parent of Seller (as of the Effective Date or most recent permitted Change of Control) 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 and provided that Seller has provided Buyer no less than thirty (30) days prior written notice of such reorganization.
- 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. "Control Compensation" is defined in Section 8.9.1.
- 1.25. "Control Equipment" is defined in Section 8.7.
- 1.26. "Control Instruction" means any System Operator Instruction to dispatch, operate, and/or control the Facility in the same manner and/or for any reason as the System Operator may, in its sole discretion, dispatch, operate, and/or control Buyer's own generating resources and power purchase arrangements used to provide service to Buyer's native load customers.
- 1.27. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction(s), and all reasonable attorneys' fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination.
- 1.28. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.
- 1.29. "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.
- 1.30. "Defaulting Party" is defined in Section 19.
- 1.31. "Definitive Interconnection System Impact Study" or "DISIS" shall have the meaning ascribed

to such term in Appendix Duke CS to the [North Carolina][South Carolina] Interconnection Procedures for implementing Alternative Definitive Interconnection Study Process effective as of [____].

- 1.32. "Delivery Period" is defined in Section 4.1.
- 1.33. "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.
- 1.34. "Disputes" is defined in Section 23.1.
- 1.35. "Early Termination Date" is defined in Section 20.1.
- 1.36. "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.
- 1.37. "Effective Date" is defined in the introductory paragraph hereto.
- 1.38. "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.
- 1.39. "Emergency Condition Instruction" means any System Operator Instruction relating to, due to, in response to, or to address an Emergency Condition.
- 1.40. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.
- 1.41. "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.
- 1.42. "Estimation Methodology" is defined in Section 8.9.3.
- 1.43. "Event of Default" is defined in Section 19.
- 1.44. "Expected Annual Output" means the quantity of Energy identified in Exhibit 5 for each calendar year during the Delivery Period of the Facility.
- 1.45. "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.
- 1.46. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.47. "First COD Date" is defined in Section 20.5.
- 1.48. "Fitch" - means Fitch Ratings Ltd. or its successor.
- 1.49. "Force Majeure" is defined in Section 14.1.

- 1.50. "Force Majeure Instruction" means any System Operator Instruction relating to, due to, in response to, or to address a Force Majeure.
- 1.51. "GAAP" is defined in Section 9.1.
- 1.52. "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).
- 1.53. "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.
- 1.54. "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.
- 1.55. "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.
- 1.56. "Independent Evaluator" shall mean Charles River Associates, the party selected by Buyer to evaluate bids submitted under the RFP.
- 1.57. "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.
- 1.58. "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).
- 1.59. "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.
- 1.60. "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.
- 1.61. "kW" means kilowatt.
- 1.62. "kWh" means kilowatt-hour.
- 1.63. "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.

- 1.64. "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.
- 1.65. "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).
- 1.66. "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.
- 1.67. "Milestone Deadline" means the deadline for Seller to achieve each Operational Milestone as set forth in Exhibit 3.
- 1.68. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.69. "MW" means megawatt.
- 1.70. "MWh" means megawatt-hour.
- 1.71. "Nameplate Capacity Rating" means the maximum generating capability of the Facility as measured at the Delivery Point (AC) as set forth in Exhibit 4.
- 1.72. "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).
- 1.73. "New Renewable Energy Facility" is defined in the Act.
- 1.74. "Non-Defaulting Party" is defined in Section 20.
- 1.75. "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.
- 1.76. "Operational Milestone Schedule" means the schedule established in Exhibit 3 setting forth each Operational Milestone that Seller must fully complete by the Milestone Deadline.
- 1.77. "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.78. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit or 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.

- 1.79. "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.
- 1.80. "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.
- 1.81. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.
- 1.82. "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.
- 1.83. "Product" means the Capacity of the Facility, Energy generated by the Facility, and the RECs associated with the Energy generated by the Facility.
- 1.84. "Protected Information" is defined in Section 16.1
- 1.85. "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.
- 1.86. "PSC" means the Public Service Commission of South Carolina, or successor thereto.
- 1.87. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as such may be amended from time to time.
- 1.88. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.
- 1.89. "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.
- 1.90. "Rating Agency" or "Rating Agencies" - means the rating entities of S&P, Moody's or Fitch.

- 1.91. "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.
- 1.92. "Regulatory Event" is defined in Section 15.1.
- 1.93. "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.
- 1.94. "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.
- 1.95. "Renewable Energy Resource" is defined in the Act.
- 1.96. "Required Approval" is defined in Section 6.
- 1.97. "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.
- 1.98. "Second COD Date" is defined in Section 20.5.1.
- 1.99. "Security Period" is defined in Section 5.6.
- 1.100. "Seller" shall have the meaning specified in the first paragraph of this Agreement.
- 1.101. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency

thereto.

- 1.102. "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.
- 1.103. "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.
- 1.104. "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.
- 1.105. "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.
- 1.106. For purposes of this Agreement, a System Operator Instruction shall not include any Interconnection Instruction.
- 1.107. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.108. "Term" is defined in Section 3.1.

- 1.109. "Testing Period" is defined in Section 4.4.
- 1.110. "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.
- 1.111. "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.
- 1.112. "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, 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 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 Capacity, output of Energy (including stored 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.
- 4.5.2. Contract Price Adder. 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 specified in Exhibit 2 (the "Contract Price Adder"), which shall be memorialized in writing signed by the Buyer and Seller. In order to effectuate the Contract Price Adder, Seller shall provide written notice to Buyer together with a copy of the executed Interconnection Agreement documenting that the system upgrades costs are being charged to Seller, as soon as reasonably possible after the execution of the Interconnection Agreement. The Contract Price Adder shall not be added to the Contract Price unless and until the Parties memorialize the adjusted Contract Price in writing 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 amount of $[4\% \times \text{total projected revenue under the Agreement during the Term as determined by Buyer in its reasonable discretion}]$, as such Performance Assurance may be adjusted pursuant to Section 20.5.1.
- 5.2. Post-COD Performance Assurance. 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. Post COD Performance Assurance shall be calculated by Buyer in a Commercially Reasonable Manner and shall equal $2\% \times \text{total projected revenue under the Agreement during the Term}$. 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]

- 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, 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 for Buyer to use the Product, including, without limitation, for use to comply 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. 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 March, April, May, September, October, or November.
- 8.2. **Maintenance Outages.** If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available and the expected

completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.

- 8.3. Notice. Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.
- 8.4. Performance. Seller shall act in a Commercially Reasonable Manner to maximize the output of the Facility in a safe manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product, in each case consistent with Prudent Utility Practice.
- 8.5. Output Requirement. Starting the first full calendar year after the Commercial Operation Date of the Facility, for each year during the Delivery Period, Seller shall deliver to Buyer no less than seventy percent (70%) of the Expected Annual Output averaged over two consecutive calendar years on a rolling basis during the Delivery Period (the "Net Output Requirement"). Where a Permitted Excuse to Perform adversely affects actual generation output of the Facility, the Net Output Requirement shall be reduced by the amount of Energy not generated due to the Permitted Excuse to Perform; provided, however, Seller agrees that it must demonstrate to Buyer, in Buyer's Commercially Reasonable discretion, that the Facility's generation output was actually reduced due to a Permitted Excuse to Perform. Buyer's sole remedy for Seller's failure to deliver the Net Output Requirement for any period of two consecutive years shall be to receive a credit against the Contract Price for each month during the immediately following full calendar year. The foregoing monthly credit to Buyer shall be determined by (a) multiplying (i) the difference between the Net Output Requirement and the actual Energy (expressed in MWh) delivered by Seller and received by Buyer during the applicable period by (ii) 50% 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). If Seller fails to satisfy the Net Output Requirement for any two-year period, to determine compliance with the Net Output Requirement in the next rolling two-year period, then the amount of Energy generated in the first year of such two-year rolling period will be deemed to be the higher of (i) seventy percent (70%) of the Expected Annual Output for such year, or (ii) the actual amount of Energy generated by the Facility in such year.
- 8.6. System Operator Instructions. 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.

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 0800 EPT on the Friday preceding the immediately upcoming week of delivery, Seller shall provide Buyer with a daily forecast of deliveries for the upcoming week (Monday through Sunday).
- 9.4.3. Day-Ahead Forecasts. By 0500 EPT 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 0500 EPT on the preceding Business Day.
- 9.4.4. Communication. Seller shall communicate forecasts in a form, template, substance, and manner as requested by Buyer (e.g. Excel template), which form, template, 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.

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 EPT 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.

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; (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.

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 prior to the Commercial Operation Date ceases construction 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. 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.
- 19.11. Seller Abandons the Facility for more than sixty (60) consecutive days;
- 19.12. 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.
- 19.13. 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.
- 19.14. Seller fails to fully comply with the PURPA Fuel Requirements.
- 19.15. Seller delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by the Facility.
- 19.16. Seller delivers or attempts to deliver any Product (or component thereof) to any entity or

person other than to the Buyer.

- 19.17. Seller fails to promptly and fully comply with a System Operator Instruction.
 - 19.18. 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.
 - 19.19. 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.
 - 19.20. Seller adds an energy storage device to the Facility without obtaining Buyer's prior written consent.
 - 19.21. 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.
 - 19.22. An assignment by a Party or Change of Control with respect to Seller, other than in compliance with Section 24;
 - 19.23. A Party becomes Bankrupt;
 - 19.24. Seller transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement;
 - 19.25. Seller violates the publicity obligations set forth in Section 26.10;
 - 19.26. Reserved; and
 - 19.27. 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.
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 2 of the DISIS (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% x 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.]

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:

Exhibit 1Estimated 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	

Exhibit 2Contract 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>Contract Price</u>
Years 1-25	

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

Exhibit 3Operational 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 4Facility 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.

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

Jun 17 2022

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

OFFICIAL COPY
JUN 17 2022

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.
Air Temperature	Degrees Celsius	± 1°	
Back Panel Temperature	Degrees Celsius	± 1°	Temperature sensor mounted behind a solar photovoltaic panel.
Plane Of Array Irradiance- Primary Meter	Watts/Meter Sq.	± 25 W/m ²	Measured with a Class II pyranometer 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.
Plane Of Array Irradiance- Secondary Meter	Watts/Meter Sq.	± 25 W/m ²	Measured with a Class II pyranometer 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.
Global Horizontal Irradiance	Watts/Meter Sq.	± 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.
Global Horizontal Diffuse Irradiance	Watts/Meter Sq.	± 25 W/m ²	Measured with a Class II pyranometer or equivalent equipment. All Solar irradiance coming from the sky and other reflected surfaces except for solar radiation coming directly from the sun and the circumsolar

			irradiance within approximately three degrees of the sun. Global diffuse irradiance sensors follow the same accuracy and mounting requirements as the GHI sensors but shall be designed to measure diffused irradiance.
Direct Irradiance (Optional)	Watts/Meter Sq.	$\pm 25 \text{ W/m}^2$	Measured with a Class II pyranometer or equivalent equipment. Solar irradiance arriving at the earth's surface from the sun's direct beam, on a plane perpendicular to the beam and is typically measured on a solar tracker.
Number of Inverters in Ready Status			Sum of the Number of inverters currently in service. Can be a decimal if one or more inverters are partially available.
Digital	Status	Accuracy	Notes
Active Power Dispatch Event	ON/OFF		ON indicates the resource is currently being dispatched to the Active Power Automatic Generation Control Setpoint.
Plane Of Array Irradiance- Primary Meter Status	ON/OFF		Communications Online Offline Status
Plane Of Array Irradiance- Secondary Meter Status	ON/OFF		Communications Online Offline Status

Docket No. E-2, Sub 1297
Docket No. E-7, Sub 1268

**Redline Version
of the
Proforma Controllable
Power Purchase Agreement
from the
June 1, 2022 Version**

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
(HB 951 – 2022 Solar RFP)

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

Overnight Mail: 400 South Tryon Street
Mail Code: ST 26A
Charlotte, North Carolina 28202
Regular Mail: PO Box 1006
Mail Code: ST 26A
Charlotte, NC 28201-1006
Attn.: Contract Administrator
DERContracts@duke-energy.com

*With Additional Notices of Events of Default
Or Potential Event of Default to:*

Overnight Mail: 526 S. Church Street
Charlotte, North Carolina 28202
Regular Mail: P.O. Box 1321
Charlotte, North Carolina 28201-1321
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 2022 Solar 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) 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 50% or more of the voting interests in Seller or substantially all of its assets; or (b) the ultimate parent of Seller (as of the Effective Date or most recent permitted Change of Control) 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 and provided that Seller has provided Buyer no less than thirty (30) days prior written notice of such reorganization.
- 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. "Control Compensation" is defined in Section 8.9.1.
- 1.25. "Control Equipment" is defined in Section 8.7.
- 1.26. "Control Instruction" means any System Operator Instruction to dispatch, operate, and/or control the Facility in the same manner and/or for any reason as the System Operator may, in its sole discretion, dispatch, operate, and/or control Buyer's own generating resources and power purchase arrangements used to provide service to Buyer's native load customers.
- 1.27. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction(s), and all reasonable attorneys' fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination.
- 1.28. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.
- 1.29. "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.
- 1.30. "Defaulting Party" is defined in Section 19.
- 1.31. "Definitive Interconnection System Impact Study" or "DISIS" shall have the meaning ascribed

to such term in Appendix Duke CS to the [North Carolina][South Carolina] Interconnection Procedures for implementing Alternative Definitive Interconnection Study Process effective as of [____].

- 1.32. "Delivery Period" is defined in Section 4.1.
- 1.33. "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.
- 1.34. "Disputes" is defined in Section 23.1.
- 1.35. "Early Termination Date" is defined in Section 20.1.
- 1.36. "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.
- 1.37. "Effective Date" is defined in the introductory paragraph hereto.
- 1.38. "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.
- 1.39. "Emergency Condition Instruction" means any System Operator Instruction relating to, due to, in response to, or to address an Emergency Condition.
- 1.40. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.
- 1.41. "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.
- 1.42. "Estimation Methodology" is defined in Section 8.9.3.
- 1.43. "Event of Default" is defined in Section 19.
- 1.44. "Expected Annual Output" means the quantity of Energy identified in Exhibit 5 for each calendar year during the Delivery Period of the Facility.
- 1.45. "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.
- 1.46. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.47. "First COD Date" is defined in Section 20.5.
- 1.48. "Fitch" - means Fitch Ratings Ltd. or its successor.
- 1.49. "Force Majeure" is defined in Section 14.1.

- 1.50. "Force Majeure Instruction" means any System Operator Instruction relating to, due to, in response to, or to address a Force Majeure.
- 1.51. "GAAP" is defined in Section 9.1.
- 1.52. "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).
- 1.53. "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.
- 1.54. "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.
- 1.55. "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.
- 1.56. "Independent Evaluator" shall mean Charles River Associates, the party selected by Buyer to evaluate bids submitted under the RFP.
- 1.57. "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.
- 1.58. "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).
- 1.59. "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.
- 1.60. "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.
- 1.61. "kW" means kilowatt.
- 1.62. "kWh" means kilowatt-hour.
- 1.63. "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.

- 1.64. "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.
- 1.65. "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).
- 1.66. "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.
- 1.67. "Milestone Deadline" means the deadline for Seller to achieve each Operational Milestone as set forth in Exhibit 3.
- 1.68. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.69. "MW" means megawatt.
- 1.70. "MWh" means megawatt-hour.
- 1.71. "Nameplate Capacity Rating" means the maximum generating capability of the Facility as measured at the Delivery Point (AC) as set forth in Exhibit 4.
- 1.72. "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).
- 1.73. "New Renewable Energy Facility" is defined in the Act.
- 1.74. "Non-Defaulting Party" is defined in Section 20.
- 1.75. "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.
- 1.76. "Operational Milestone Schedule" means the schedule established in Exhibit 3 setting forth each Operational Milestone that Seller must fully complete by the Milestone Deadline.
- 1.77. "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.78. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit or 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.

- 1.79. "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.
- 1.80. "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.
- 1.81. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.
- 1.82. "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.
- 1.83. "Product" means the Capacity of the Facility, Energy generated by the Facility, and the RECs associated with the Energy generated by the Facility.
- 1.84. "Protected Information" is defined in Section 16.1
- 1.85. "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.
- 1.86. "PSC" means the Public Service Commission of South Carolina, or successor thereto.
- 1.87. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as such may be amended from time to time.
- 1.88. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.
- 1.89. "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.
- 1.90. "Rating Agency" or "Rating Agencies" - means the rating entities of S&P, Moody's or Fitch.

- 1.91. "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.
- 1.92. "Regulatory Event" is defined in Section 15.1.
- 1.93. "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.
- 1.94. "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.
- 1.95. "Renewable Energy Resource" is defined in the Act.
- 1.96. "Required Approval" is defined in Section 6.
- 1.97. "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.
- 1.98. "Second COD Date" is defined in Section 20.5.1.
- 1.99. "Security Period" is defined in Section 5.6.
- 1.100. "Seller" shall have the meaning specified in the first paragraph of this Agreement.
- 1.101. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency

thereto.

- 1.102. "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.
- 1.103. "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.
- 1.104. "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.
- 1.105. "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.
- 1.106. For purposes of this Agreement, a System Operator Instruction shall not include any Interconnection Instruction.
- 1.107. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.108. "Term" is defined in Section 3.1.

- 1.109. "Testing Period" is defined in Section 4.4.
- 1.110. "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.
- 1.111. "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.
- 1.112. "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, 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 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 Capacity, output of Energy (including stored 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.
- 4.5.2. Contract Price Adder. 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 specified in Exhibit 2 (the "Contract Price Adder"), which shall be memorialized in writing signed by the Buyer and Seller. In order to effectuate the Contract Price Adder, Seller shall provide written notice to Buyer together with a copy of the executed Interconnection Agreement documenting that the system upgrades costs are being charged to Seller, as soon as reasonably possible after the execution of the Interconnection Agreement. The Contract Price Adder shall not be added to the Contract Price unless and until the Parties memorialize the adjusted Contract Price in writing 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 amount of $[4\% \times \text{total projected revenue under the Agreement during the Term as determined by Buyer in its reasonable discretion}]$, as such Performance Assurance may be adjusted pursuant to Section 20.5.1.
- 5.2. Post-COD Performance Assurance. 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. Post COD Performance Assurance shall be calculated by Buyer in a Commercially Reasonable Manner and shall equal $2\% \times \text{total projected revenue under the Agreement during the Term}$. 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]

- 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, 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 for Buyer to use the Product, including, without limitation, for use to comply 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. 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 March, April, May, September, October, or November.
- 8.2. **Maintenance Outages.** If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available and the expected

completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.

- 8.3. Notice. Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.
- 8.4. Performance. Seller shall act in a Commercially Reasonable Manner to maximize the output of the Facility in a safe manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product, in each case consistent with Prudent Utility Practice.
- 8.5. Output Requirement. Starting the first full calendar year after the Commercial Operation Date of the Facility, for each year during the Delivery Period, Seller shall deliver to Buyer no less than seventy percent (70%) of the Expected Annual Output averaged over two consecutive calendar years on a rolling basis during the Delivery Period (the "Net Output Requirement"). Where a Permitted Excuse to Perform adversely affects actual generation output of the Facility, the Net Output Requirement shall be reduced by the amount of Energy not generated due to the Permitted Excuse to Perform; provided, however, Seller agrees that it must demonstrate to Buyer, in Buyer's Commercially Reasonable discretion, that the Facility's generation output was actually reduced due to a Permitted Excuse to Perform. Buyer's sole remedy for Seller's failure to deliver the Net Output Requirement for any period of two consecutive years shall be to receive a credit against the Contract Price for each month during the immediately following full calendar year. The foregoing monthly credit to Buyer shall be determined by (a) multiplying (i) the difference between the Net Output Requirement and the actual Energy (expressed in MWh) delivered by Seller and received by Buyer during the applicable period by (ii) 50% 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). If Seller fails to satisfy the Net Output Requirement for any two-year period, to determine compliance with the Net Output Requirement in the next rolling two-year period, then the amount of Energy generated in the first year of such two-year rolling period will be deemed to be the higher of (i) seventy percent (70%) of the Expected Annual Output for such year, or (ii) the actual amount of Energy generated by the Facility in such year.
- 8.6. System Operator Instructions. 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.

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 0800 EPT on the Friday preceding the immediately upcoming week of delivery, Seller shall provide Buyer with a daily forecast of deliveries for the upcoming week (Monday through Sunday).
- 9.4.3. Day-Ahead Forecasts. By 0500 EPT 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 0500 EPT on the preceding Business Day.
- 9.4.4. Communication. Seller shall communicate forecasts in a form, template, substance, and manner as requested by Buyer (e.g. Excel template), which form, template, 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.

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 EPT 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.

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; (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.

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 prior to the Commercial Operation Date ceases construction 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. 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.
- 19.11. Seller Abandons the Facility for more than sixty (60) consecutive days;
- 19.12. 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.
- 19.13. 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.
- 19.14. Seller fails to fully comply with the PURPA Fuel Requirements.
- 19.15. Seller delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by the Facility.
- 19.16. Seller delivers or attempts to deliver any Product (or component thereof) to any entity or

person other than to the Buyer.

- 19.17. Seller fails to promptly and fully comply with a System Operator Instruction.
- 19.18. 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.
- 19.19. 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.

~~19.20. Reserved. Seller adds an energy storage device to the Facility without obtaining Buyer's prior written consent.~~

~~19.20-19.21.~~ 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.

~~19.21-19.22.~~ An assignment by a Party or Change of Control with respect to Seller, other than in compliance with Section 24;

~~19.22-19.23.~~ A Party becomes Bankrupt;

~~19.23-19.24.~~ Seller transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement;

~~19.24-19.25.~~ Seller violates the publicity obligations set forth in Section 26.10;

~~19.25-19.26.~~ Reserved; and

~~19.26-19.27.~~ 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.

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 2 of the DISIS (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.]

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:

Exhibit 1Estimated 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	

Exhibit 2Contract 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>Contract Price</u>
Years 1-25	

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

Exhibit 3Operational 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 4Facility 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.

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

Jun 17 2022

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

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.
Air Temperature	Degrees Celsius	± 1°	
Back Panel Temperature	Degrees Celsius	± 1°	Temperature sensor mounted behind a solar photovoltaic panel.
Plane Of Array Irradiance- Primary Meter	Watts/Meter Sq.	± 25 W/m ²	Measured with a Class II pyranometer 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.
Plane Of Array Irradiance- Secondary Meter	Watts/Meter Sq.	± 25 W/m ²	Measured with a Class II pyranometer 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.
Global Horizontal Irradiance	Watts/Meter Sq.	± 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.
Global Horizontal Diffuse Irradiance	Watts/Meter Sq.	± 25 W/m ²	Measured with a Class II pyranometer or equivalent equipment. All Solar irradiance coming from the sky and other reflected surfaces except for solar radiation coming directly from the sun and the circumsolar

			irradiance within approximately three degrees of the sun. Global diffuse irradiance sensors follow the same accuracy and mounting requirements as the GHI sensors but shall be designed to measure diffused irradiance.
Direct Irradiance (Optional)	Watts/Meter Sq.	$\pm 25 \text{ W/m}^2$	Measured with a Class II pyranometer or equivalent equipment. Solar irradiance arriving at the earth's surface from the sun's direct beam, on a plane perpendicular to the beam and is typically measured on a solar tracker.
Number of Inverters in Ready Status			Sum of the Number of inverters currently in service. Can be a decimal if one or more inverters are partially available.
Digital	Status	Accuracy	Notes
Active Power Dispatch Event	ON/OFF		ON indicates the resource is currently being dispatched to the Active Power Automatic Generation Control Setpoint.
Plane Of Array Irradiance- Primary Meter Status	ON/OFF		Communications Online Offline Status
Plane Of Array Irradiance- Secondary Meter Status	ON/OFF		Communications Online Offline Status

