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March 18, 2019

VIA ELECTRONIC FILING

Ms. M. Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

RE: Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Compliance Filing
Docket Nos. E-7, Sub 1169 and E-2, Sub 1170

Dear Ms. Jarvis:

Pursuant to the Commission's February 1, 2019, *Order Modifying and Approving Green Source Advantage Program, Requiring Compliance Filing, and Allowing Comments,* Duke Energy Carolinas, LLC and Duke Energy Progress, LLC hereby jointly submit their Green Source Advantage Compliance Filing.

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

Sincerely,

Jack E. Jirak

Enclosures

cc: Parties of Record

CERTIFICATE OF SERVICE

I certify that a copy of the Compliance Filing of Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, in Docket Nos. E-7, Sub 1169 and E-2, Sub 1170, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to parties of record.

This the 18th day of March, 2019.

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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1170
DOCKET NO. E-7, SUB 1169

In the Matter of Petition for Approval of Green Source Advantage Program and Rider GSA to Implement N.C. Gen. Stat. § 62-159.2	)))))	**DUKE ENERGY CAROLINAS, LLC'S AND DUKE ENERGY PROGRESS, LLC'S GREEN SOURCE ADVANTAGE PROGRAM COMPLIANCE FILING**

I. INTRODUCTION AND OVERVIEW

On February 1, 2019, the North Carolina Utilities Commission ("Commission") issued its *Order Modifying and Approving Green Source Advantage Program, Requiring Compliance Filing and Allowing Comments* in the above captioned dockets ("Order"). As directed by the Order, Duke Energy Carolinas, LLC ("DEC"), and Duke Energy Progress, LLC ("DEP" and together with DEC, the "Companies" or "Duke") hereby jointly submit this Green Source Advantage ("GSA") Program Compliance Filing. The Companies' Compliance Filing describes the modifications made to the GSA Program as directed by the Order and, for the sake of clarity, also summarizes other key GSA Program details that were not modified by the Order.

All GSA Program documents are included in this Compliance Filing as detailed below:

- GSA Service Agreement—**Exhibit A**
  - A redline is also included showing changes as compared with the GSA Service Agreement filed by the Companies in the GSA dockets on April 20, 2018 (see **Exhibit B**)
- Power Purchase Agreement ("PPA")—**Exhibit C**
  - Two redlines are also included showing changes as compared with the Competitive Procurement of Renewable Energy ("CPRE")

Tranche 1 PPA (see **Exhibit D**) and as compared with the version filed on August 29, 2018 in the GSA dockets (see **Exhibit E**)

- Rider GSA-1 Green Source Advantage (DEP Clean Version)—**Exhibit F**
  - A redline is also included showing changes as compared with the tariff filed by the Companies in the GSA dockets on April 20, 2018 (see **Exhibit G**)
- Rider GSA-1 Green Source Advantage (DEC Clean Version)—**Exhibit H**
  - A redline is also included showing changes as compared with the tariff filed by the Companies in the GSA dockets on April 20, 2018 (see **Exhibit I**)
- GSA Application—**Exhibit J**
- GSA Term Sheet—**Exhibit K**

II. SELF-SUPPLY STRUCTURE

In its Order, the Commission determined that there was insufficient customer interest to support approval of the Companies' proposed Standard Offer option. Therefore, the GSA Program will include only the Self-Supply option.

Under the Self-Supply option, the GSA Customer is responsible for identifying and negotiating with a third-party that is willing to develop and construct a renewable energy facility meeting the eligibility criteria specified herein ("GSA Facility"). The commercial agreement— including the agreed upon MWh pricing (the "Negotiated Price") reached between the GSA Customer and entity responsible for developing the renewable facility ("GSA Facility Owner")—will be memorialized in the GSA Term Sheet that must be submitted with the Application. Per the Commission's direction, GSA Customers are also permitted to utilize either of the Companies or an affiliate of the Companies to serve as the GSA Facility Owner.[1]

[1] Order, at 53. ("Under the remaining 'self-supply option,' as proposed by Duke, the customer can choose to have Duke procure energy and capacity from a facility that Duke develops.")

If selected pursuant to the application process described in Section VI, the GSA Customer would then be required to execute the GSA Service Agreement (along with the GSA Facility Owner and DEC or DEP, as applicable) and the GSA Facility Owner would be required to execute a PPA (except in the event that DEP or DEC is the GSA Facility Owner). Under the terms of the GSA Service Agreement, the GSA Customer would be responsible for paying the GSA Product Charge (equal to the Negotiated Price) and would receive the Bill Credit by way of assignment by the GSA Facility Owner. The GSA Facility Owner would, in turn, receive the GSA Product Charge via assignment by the GSA Customer.[2]

In addition to approving the Self-Supply option, the Order also provided that the Commission "…will remain open to receiving from Duke a proposed Renewable Energy Certificate ("REC")-purchase program, separate and apart from the GSA Program."[3] In response to this determination, the Companies intend to propose a REC-purchase program within 30 days of this Compliance Filing but are currently awaiting certain approvals external to the Companies. This REC purchase program will be completely independent from the GSA Program.

III. BILL CREDIT

a. Overview

As contemplated by the Order, participating customers will have the choice of the following two Bill Credits:

[2] The Walmart settlement did contemplate that "[i]n periods in which the PPA price is less than the GSA Product Charge, additional amounts may be due…to the GSA Renewable Supplier." However, after further review, the Companies now believe that this statement is incorrect and that there would be no scenario in which additional amounts would be due to the GSA Facility Owner.

[3] Order, at 53.

Administratively Established Avoided Cost Bill Credit: Under this option, the GSA Customer's Bill Credit shall be a fixed levelized avoided energy and capacity rate calculated using the methodology approved pursuant to N.C. Gen. Stat. § 62-156(c) and applicable in the negotiated QF PPA context calculated over a period of two years or five years (for terms of five years or more). In the case of 10, 15, or 20 year terms, the Administratively Established Avoided Cost Bill Credit will be refreshed at five-year intervals until the end of the contract term utilizing the then current methodology approved pursuant to N.C. Gen. Stat. § 62-156(c).[4]

Hourly Marginal Avoided Cost Bill Credit: Under this option, the GSA Customer's Bill Credit shall be equal to the Hourly Marginal Avoided Cost Rate in each hour in which energy is produced by the GSA Facility. The Hourly Marginal Avoided Cost Rate shall be calculated by DEP or DEC, respectively, based upon the methodology specified in the applicable GSA Tariff. The respective methodologies are unchanged from Companies' August 16, 2018 filing and are reproduced below for ease of reference.

DEP

Hourly RTP Rate = MENERGY + CAP where:

MENERGY = Marginal Energy Cost per kilowatt-hour including marginal fuel and variable operating and maintenance expenses

CAP = Tiered Capacity Charge per kilowatt-hour applicable whenever the day-ahead forecast of the ratio of hourly available generation to hourly demand is equal or less than 1.15

The hourly RTP rate will not, under any circumstances, be lower than zero.

[4] Order, at 61

DEC

Hourly Rate = (Hourly Energy Charges + Rationing Charges).

Hourly Energy Charge = Expected marginal production cost, and other directly-related costs.

Rationing Charge = marginal capacity cost during hours with generation constraint.

The Hourly Rate will not, under any circumstance, be lower than zero.

b. Administratively Established Avoided Cost Values

Duke will make available on the GSA Program webpage the initially applicable 2- and 5-year Administratively Established Avoided Cost values promptly after final Commission order approving this Compliance Filing. The specified Administratively Established Avoided Cost rates will be applicable for all GSA Applications submitted in the first 60 days after the enrollment window opens. That is, any GSA Application submitted in the first 60 days requesting an Administratively Established Avoided Cost Bill Credit will be "locked into" the published Administratively Established Avoided Cost Bill Credit so long as the GSA Customer satisfies all other GSA Program requirements. Thereafter, Duke will provide updated Administratively Established Avoided Cost Bill Credit values upon request of a potential GSA Customer.

IV. OVERVIEW OF GSA PROGRAM DOCUMENTS

This Compliance Filing includes the five documents necessary for GSA Program implementation. The following is a brief summary of such documents.

a. GSA Service Agreement

The GSA Service Agreement (Exhibit A) has evolved into a three-party agreement to facilitate both the Administratively Established Avoided Cost and the Hourly Marginal Avoided Cost Bill Credit arrangements. The GSA Service Agreement sets the core

contractual relationship, assigning and allocating risk and payment streams between the three parties. The key provisions are as follows:

- Section 7 describes the assignment of payment streams.
- Section 11 provides for the transfer of RECs from the GSA Facility Owner to the GSA Customer. Notably, the GSA Customer is free to designate the "Applicable Program" and "Tracking System" for purposes of facilitating REC transfer and tracking (such as the NC RETS Tracking System and Green-e certification).

b. GSA PPA

The GSA PPA (Exhibit C) is substantially similar to the PPA approved by the Commission for use in CPRE Tranche 1.[5] Because the GSA PPA is based on the CPRE Tranche 1 PPA and, in light of the extensive comment and approval process for the CPRE Tranche 1 PPA,[6] the Companies believe that the GSA PPA is a commercially reasonable document that should be utilized in the context of the GSA Program.

The primary changes as compared with the CPRE PPA (see Exhibit D) are as follows:

[5] Order Denying Joint Motion, Approving Pro Forma PPA, and Providing Other Relief (Docket Nos. E-2, Sub 1159 and E-7, Sub 1156) (June 25, 2018).

[6] As background, the CPRE PPA was based on the form PPA utilized by the Companies for negotiated QF purchased power arrangements. The Commission's February 21, 2018 *Order Modifying and Approving Joint CPRE Program* expressly approved the Companies' originally-filed *pro forma* PPA for use in the Tranche 1 Request for Proposals ("RFP"). *Order Modifying and Approving Joint CPRE Program*, at 30, Docket Nos. E-2, Sub 1159, E-7, Sub 1156 (Feb. 21, 2018) ("CPRE Approval Order"). The *Program Approval Order* also directed the Company to consider incorporating changes recommended by various parties in that proceeding. In response to that directive, the Companies made additional revisions to the PPA. Through the NCUC Rule R8-71(f)(1) CPRE RFP pre-issuance process, the Companies received additional market participant comments to the *pro forma* Tranche 1 PPA and such comments were reviewed by the Companies and the IA and, where determined reasonable and appropriate, were incorporated into the *pro forma* Tranche 1 PPA. The IA also concluded that the CPRE RFP documents (including the PPA) were reasonable. *See* Report of the Independent Administrator Regarding Comments Received on Draft Document for the Competitive Procurement of Renewable Energy (CPRE) Program. (June 20, 2018). Finally, the Commission approved the revised CPRE Tranche 1 PPA. See FN 3.

- All provisions related to RECs have been removed, as RECs are not being delivered to Duke under the terms of the PPA but instead are delivered to the GSA Customer under the terms of the GSA Service Agreement.
- References to CPRE and the governing statute have been removed.
- Per the Commission's Order, the Companies have modified the CPRE PPA's curtailment provision.[7] The curtailment provisions now mirror those in the Companies' negotiated QF PPAs.
- The contract pricing and term options have been modified in accordance with the Order.
- The Liquidated Damages and Performance Assurance requirements have been amended as further described in Section VII.

Importantly, the contract price specified in the PPA is the relevant Bill Credit methodology selected by the applicable GSA Customer. The GSA Facility Owner receives the Negotiated Price for so long as the GSA Customer continues to perform its obligations under the GSA Service Agreement. In the event of a default under the GSA Service Agreement by the applicable GSA Customer, the PPA with the GSA Facility Owner will remain in place for the originally specified term and the GSA Generating Facility will continue to serve as a system asset.

c. GSA Tariff

The respective tariffs describe the overall GSA Program structure, including the available Bill Credit options. The modifications made to the tariff reflect the terms of the Order.

d. GSA Application

The GSA Application is the form that must be submitted at the time that a GSA Customer seeks enrollment in the GSA Program.

[7] Order, at 55-56.

e. GSA Term Sheet

The GSA Term Sheet will identify a number of details regarding the GSA Facility and the GSA Facility Owner as well as the Negotiated Price. A mutually executed electronic version of the GSA Term Sheet must be submitted at the time of the submission of the GSA Application.

V. MISCELLANEOUS PROGRAM DETAILS

a. Capacity Allocation

The allocation of GSA capacity and eligibility criteria remains unchanged from the Companies' initial GSA Program application. N.C. Gen. Stat. § 62-159.2 ("GSA Program statute") provides for the direct procurement of up to 600 MW ("Maximum GSA Program Capacity") of new renewable energy capacity through the GSA Program over the next five years (from the date of the Commission's order regarding this Compliance Filing, such period the "GSA Program Period"). 250 MW of the 600 MW Maximum GSA Program Capacity will initially be reserved exclusively for the University of North Carolina and 100 MW will be reserved exclusively for major military installations for a three year period (from the date of the Commission's order regarding this Compliance Filing, such period the "Reserve Period").[8] The remaining 250 MW of the Maximum Program Capacity ("Unreserved Capacity") will be available to eligible large nonresidential customers.[9] If Program capacity reserved for Military Customers and UNC System Customers remains unsubscribed after the end of Reserve Period, such capacity will become available to any

[8] N.C. Gen. Stat. § 62-159.2(c).

[9] N.C. Gen. Stat. § 62-159.2(a).

eligible GSA Customer, subject to the Companies' determination of the appropriate allocation between DEC and DEP, as discussed below.[10]

If the Maximum GSA Program Capacity is not fully subscribed by eligible GSA Customers by the end of the GSA Program Period, then the Companies will transition the remaining GSA Program capacity to the general renewable energy competitive procurement as an expansion of the CPRE Program.

The initial 250 MW of Unreserved Capacity available to the Companies' large nonresidential customers has been allocated between DEC and DEP based upon the load-ratio share between DEC's and DEP's commercial and industrial customer classes. Specifically, 160 MW of this initial 250 MW of Unreserved Capacity shall be allocated to DEC customers, and 90 MW shall be allocated for DEP customers. The Companies will review and potentially update this allocation if any capacity remains unsubscribed at the end of the three-year Reserve Period.

b. GSA Customer Eligibility Criteria

The eligibility criteria for GSA Customers remains unchanged from the Companies' initial GSA Program application. Any customer seeking to participate in the GSA Program must have a contract demand (i) equal to or greater than one megawatt ("MW") or (ii) at multiple services locations that, in aggregate, is equal to or greater than five MW.[11] If a GSA Customer's Program eligibility is based on aggregating its accounts to meet the minimum five MW eligibility threshold, each of the aggregated accounts must

[10] N.C. Gen. Stat. § 62-159.2(d).

[11] N.C. Gen. Stat. § 62-159.2(a).

be located within the same service territory. GSA Customers must also be in the same service territory as the GSA Facility. Outdoor lighting accounts are ineligible to participate in the GSA Program.

c. GSA Facility Eligibility Criteria

In order to be eligible to participate in the GSA Program, the generation facility must (1) not have achieved commercial operation prior to final Commission approval of the GSA Program; (2) exclusively use a renewable energy resource identified in N.C. Gen. Stat. § 62-133.8(a)(8); (3) be a Qualifying Facility (as defined in applicable regulations of the Federal Energy Regulatory Commission) except in the case of any Duke-owned facility; (4) dedicate all of its supply to the Program; (5) be registered as new renewable energy facilities pursuant to Commission Rule R8-66; and (5) be located in DEP's or DEC's service territory in either North Carolina or South Carolina.

d. REC Transfer

Pursuant to Section 11 of the GSA Service Agreement, RECs will be transferred directly from the GSA Facility Owner to the GSA Customer without the need for a separate contractual arrangement (as had been contemplated in the initial GSA Application). The GSA Customer and GSA Facility Owner will specify in the GSA Service Agreement an agreed-upon tracking and reporting system for the RECs.

e. Interconnection Issues

In its Order, the Commission directed the Company to follow the "traditional approach" in "assigning all interconnection costs" to the GSA Facility Owner (i.e., the legal entity that submitted the applicable Interconnection Request).[12] The Companies will

[12] Order, at 62.

implement this directive and agree that this is the appropriate treatment in the context of the GSA Program and aligns with the statutory directive for the GSA Customer to pay the "total cost of any renewable energy and capacity."[13]

Simply stated, the GSA Facility Owner will be required to pursue interconnection under the applicable interconnection procedures (whether North Carolina or South Carolina or FERC) and no unique interconnection-related arrangements will be implemented in connection with the GSA Program. The GSA Facility Owner will be responsible in accordance with the applicable interconnection procedures for the cost of Interconnection Facilities and any transmission or distribution Network Upgrade costs assigned to GSA Facility. [14] The GSA Facility Owner will presumably take into account the cost of Interconnection Facilities and any transmission and distribution Network Upgrades in agreeing upon the Negotiated Price with a GSA Customer.[15]

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[13] The issues raised earlier in the proceeding related to the potential rate base treatment of network upgrades were only relevant if an RFP were to be utilized in the context of the GSA Program. Since the Commission did not approve the Standard Offer option, no RFP is needed and therefore, the issues addressed in reply comments concerning rate base recovery of network upgrades are moot.

[14] The Commission states in its Order that "the Commission recognizes that Duke must provide the eligible customer with information regarding the interconnection costs and/or grid upgrade costs fairly attributed to accommodating the renewable energy facility selected by the GSA customer relatively early in the GSA Program application process." To be clear, each project will be studied in accordance with the applicable interconnection procedures and, in this process, the Companies will be engaging with the GSA Facility Owner that submitted the Interconnection Request and not the GSA Customer. Such GSA Facility Owner will receive "information regarding the interconnection costs and/or grid upgrades costs" in accordance with the serial processing requirements applicable under the relevant procedures. Therefore, to be clear, a GSA Customer will not necessarily receive information concerning the interconnection costs "relatively early in the GSA Program application process." Instead, interconnection-related information will be provided to the GSA Facility Owner in accordance with the applicable interconnection procedures.

[15] The Order also contemplates the interconnection costs being assigned, in the alternative, to the GSA Customer. There is no mechanism in the currently applicable interconnection procedures to allow for interconnection costs to be assigned to the GSA Customer. However, assignment to the GSA Facility Owner, as recommended by the Commission and as discussed herein, ultimately results in the GSA Customer bearing the cost, since the Negotiated Price will ultimately reflect the "all-in" price of developing, constructing and interconnecting the GSA Facility.

In its reply comments, the Companies did agree to eliminate the requirement that Self-Supply GSA projects must have received a full System Impact Study before submission of a GSA Customer Application. This modification was made primarily to ensure an "equal playing field" between Self Supply and Standard Offer projects (which was the concern articulated by Public Staff).

Now that the Standard Offer option has been eliminated, the Companies respectfully request that the Commission consider whether a completed, full System Impact Study[16] should be a requirement for potential GSA Facilities. The reason for imposing this requirement is to ensure that any potential GSA Facility has made sufficient progress in the interconnection process to achieve commercial operation in a timely manner. Absent this requirement, there would be a risk that speculative projects early in the development process could consume available GSA Program capacity even though substantial and perhaps insurmountable interconnection cost hurdles exist to successful project completion. Allowing GSA Customers and GSA Facility Owners to submit a Term Sheet and enter into a GSA Service Agreement for projects that have not received a full System Impact Study could adversely impact other customers seeking to participate in the GSA Program as well as result in a prolonged Program execution period and delayed implementation of the statutorily prescribed rollover of capacity.

For projects that have not received a full System Impact Study, there is typically a much higher degree of uncertainty regarding the ultimate timing of interconnection and,

[16] As background, the System Impact Study is the initial modeling and engineering study designed to assess the impact of interconnecting the generating facility with the Companies' distribution or transmission system and includes an initial cost estimate of the required Interconnection Facilities and transmission and distribution Network Upgrades.

therefore, commercial operations (for instance, a project that is interdependent on the completion of distribution or transmission upgrades may remain on hold for an extended period of time as required under the North Carolina Interconnection Procedures).[17] From a commercial perspective, a project that has not received a full System Impact Study is also likely unable to provide optimal pricing given that substantial uncertainty would remain concerning the cost of Interconnection Facilities or, if applicable, any transmission and/or distribution network upgrades. Furthermore, if a project without a full System Impact Study is accepted into the GSA Program, then it could be 3-4 years or more until such project achieves commercial operation. Therefore, it may be reasonable to only accept into the GSA Program those GSA Customers that have identified "ready" projects later in the interconnection process that have a higher degree of cost and timing certainty.

f. Contract Term Length

As directed by the Order, for eligible GSA Customers that elected the Administratively Established Avoided Cost Bill Credit, contract term of two-, five-, ten-, fifteen-, and twenty-years shall be available. For eligible GSA Customers electing the Hourly Bill Credit, a contract term of any number of years up to the 20-year limit provided in the GSA Statute shall be available.

g. Administrative Charges and Billing

The administrative charge remains unchanged from the Companies' initial application: a monthly charge of $375 per GSA Customer account, plus an additional $50

[17] The Companies described these issues at length in their recent testimony in Docket E-100, Sub 101. For instance, as witness Gary Freeman described, there are "500 MW of distribution projects and 3,000 MW of transmission projects" in particular transmission-constrained areas of DEP that cannot interconnect until transmission upgrades are constructed—transmission upgrades that will take several years to complete. A full System Impact Study Report will identify any distribution system and transmission system impacts and provide a preliminary cost estimate to mitigate these impacts.

charge per additional account billed. The GSA Customer's billing statement, in addition to rates and charges due under its current tariff, will also reflect the total monthly MWh, the monthly GSA Product Charge and the monthly GSA Bill Credit.

VI. OVERVIEW OF APPLICATION PROCESS

Duke anticipates that it will commence accepting program applications within 60 days of the Commission's order regarding this Compliance Filing. An eligible GSA Customer seeking to participate in the GSA Program must submit a GSA Application**.** As shown on Exhibit H, the GSA Application will require the eligible GSA Customers to specify a number of details including, but not limited to, the (1) the name of GSA Facility Owner with whom customer has independently negotiated, (2) the interconnection queue number for the proposed GSA Facility, (3) annual peak demand of the GSA Customer, (4) the amount of capacity to be procured from the proposed GSA Facility, (5) the length of contract term requested and (6) the Bill Credit selected.

The GSA Application must be accompanied by the GSA Term Sheet, executed by the GSA Customer and the proposed GSA Facility Owner. As is shown in Exhibit K, the GSA Term Sheet will specify the Negotiated Price and will also require the GSA Facility Owner to attest that the GSA Facility will be exclusively dedicated to the GSA Program.

Electronic copies of the GSA Application and GSA Term Sheet will be made available on the GSA Program website as promptly as possible but no later than 30 days prior to the opening of enrollment at the following web address: www.duke-energy.com/ncgreensource. Following the instructions on the GSA Program webpage, eligible customers will download the GSA Application and Term Sheet and complete both documents. Unless otherwise ordered by the Commission, Duke will provide 30-day advance notice regarding the date and time at which the GSA enrollment window will be

opening ("Enrollment Commencement Date").[18] Starting on the Enrollment Commencement Date, Duke will begin receiving completed GSA Applications (including completed Term Sheets) via email to the designated GSA Program email box listed on the GSA Program webpage and application along with payment of $2,000 application fee.[19] Duke will review GSA Applications for completeness and compliance with all GSA Program eligibility requirements. Any GSA Application that does not contain all required information or for which payment of the application fee has not been received will be rejected and will not be deemed submitted until re-submitted with all required information.

Duke will assign GSA capacity to eligible GSA Customers on a first-come, first-served basis using the date and time received stamp of the emailed GSA Program Application as the queueing method. Submitted Applications will be queued in the appropriate category (either Military, UNC system or large business customers). If the Unreserved Capacity is fully subscribed, notice will be provided to all pending GSA customers that have submitted GSA Program Applications and any remaining large business customers that were not assigned GSA capacity may elect to be placed on a waiting list, with waiting list priority to be based on the date and time of GSA Application submittal. If GSA Capacity becomes available, such GSA capacity will be made available to eligible GSA Customers on the waiting list in order of priority. GSA capacity may become available in the event that (1) an eligible GSA Customer that is initially awarded GSA capacity is unable to consummate the transaction or (2) the capacity allocated to the

[18] In light of the elimination of the Standard Offer option and the related RFP, the enrollment window concept has been substantially simplified. Once enrollment commences on the Enrollment Commencement Date, enrollment will remain open through the conclusion of the Program.

[19] The $2,000 application fee will be refunded to the Customer only in the event that the Customer's application is rejected due to insufficient GSA Program Capacity.

Military and UNC is unsubscribed at the end of their Reserve Period. Duke will notify the eligible GSA Customer(s) on the waiting list in order of priority if GSA capacity becomes available, and the eligible GSA Customer will be provided a reasonable amount of time to determine whether it desires to move forward with the GSA Program.

Duke will provide written notification to those eligible GSA Customers that are awarded GSA capacity confirming their enrollment in the GSA Program. At that time, Duke will also provide the GSA Customer with the GSA Service Agreement and will also send the PPA to the GSA Facility Owner for execution.

The GSA Service Agreement (executed by both the GSA Customer and the GSA Facility Owner) and PPA (executed by GSA Facility Owner) are due within 30 calendar days of receipt from Duke. An electronic version of the GSA Service Agreement should be emailed to the program email box and the date stamp of email delivery will be used as the official submittal date. Failure by the GSA Customer to submit both within the required time will result in the termination of the GSA Customer application and reserved capacity, which would then require the eligible GSA Customer to start the application again.

The GSA Program webpage (www.duke-energy.com/ncgreensource) will provide interested customers with a comprehensive overview of how the GSA Program works, application fee requirements, answers to frequently asked questions, and electronic copies of the GSA Application and Term Sheet. The GSA Program webpage is designed as a tutorial of the important details about the GSA program assisting customers to make an informed decision about applying to the program: customer application, billing and administrative charges, and bill credit methodology.

VII. FINANCIAL ASSURANCE REQUIREMENTS

a. GSA Service Agreement

In light of changes to the GSA Program (as compared with the Companies' initial application), the Companies have determined that no financial assurance shall be required of the GSA Customer. As the GSA Program will now be structured, if the GSA Customer defaults on its obligations, the GSA Service Agreement will be terminated but the applicable PPA will remain in place and, Duke will continue to pay the GSA Facility Owner under the terms of the PPA (i.e., either the Administratively Established Avoided Cost or the Hourly Marginal Avoided Cost). Because the Commission has concluded that non-participating customers are held neutral by purchases of energy at the Administratively Established Avoided Cost or the Hourly Marginal Avoided Cost, there is a significantly reduced risk of harm to non-participating customers if the GSA Customer defaults. Therefore, no financial assurance will be required of the GSA Customer on behalf of all customers.[20] The GSA Facility Owner is free to separately require financial assurance of the GSA Customer if the GSA Facility Owner deems necessary.

[20] N.C. Gen Stat. § 62-159.2 provides that "[e]ach public utility shall establish reasonable credit requirements for financial assurance for eligible customers that are consistent with the Uniform Commercial Code of North Carolina. Major military installations and The University of North Carolina are exempt from the financial assurance requirements of this section." The Companies note that since no financial assurance is being required of GSA Customers under the amended Program design, this statutory provision is not applicable. However, for the avoidance of doubt, the financial assurance being required of the GSA Facility Owner is reasonable and consistent with the Uniform Commercial Code of North Carolina, which provides for the right to "adequate assurance of due performance" and states the "adequacy of any assurance offered shall be determined according to commercial standards." The fact that the financial assurance is consistent with established practice in existing negotiated QF PPAs that have been executed demonstrates that such requirements are consistent with commercial standards.

b. PPA

With respect to renewable PPAs in general, Duke has historically required performance assurance to cover certain risks both prior to commercial operation ("pre-COD security") and after commercial operation ("post-COD security"). Pre-COD security is typically required by Duke to cover the amount of damages in the event that the project is materially delayed or is not completed. Post-COD security is typically required by Duke to cover the overpayment risk resulting from a levelized avoided cost-based price. Under a fixed administratively-established avoided cost based PPA, the contract price Duke pays is above its administratively established avoided cost earlier in the term of the transaction and below its anticipated administratively established avoided cost later in the term. Therefore, if a seller were to default during the term, Duke would not receive the benefit of the beneficial price differential to offset the amounts already paid in excess of administratively established avoided cost and credit security is required to cover this exposure.

In light of these facts, the GSA PPA includes pre-COD financial assurance requirements that are similar in size to the pre-COD requirements in the negotiated QF PPAs. Post-COD financial assurance will only be required for the GSA PPAs that utilize the Administratively Established Avoided Cost as the contract price and will not be required of those PPAs that utilize the Hourly Marginal Avoided Cost as the contract price in light of the fact that price differential described above would not be occurring in that case.

VIII. COST RECOVERY

The Order directed Duke to confirm the Commission's understanding of the cost recovery mechanics of the GSA Program. The Companies hereby confirm that the Commission's description set forth on pages 59-61 of the Order is accurate.

In its application for cost recovery of GSA Program-related costs through DEC's or DEP's applicable fuel cost recovery proceeding, the Companies will, as directed by the Commission, demonstrate that (1) GSA Customers continue to pay their normal retail bill; (2) that Duke has collected the GSA Administrative Charge from GSA customers; (3) that Duke has collected the GSA Product Charge from GSA Customers and paid this charge to the relevant GSA Facility Owner; and (4) that Duke has paid GSA Customers a GSA Bill Credit each month based on the Bill Credit specified in the applicable GSA Service Agreement. Duke will present North Carolina retail customers' share of the total of all GSA Bill Credit payments in the relevant test period and the forecasted billing period for recovery from North Carolina retail customers as allowed by N.C. Gen. Stat. § 62-133.2(a1)(11). Such payments to GSA Customers will include both those made in connection with Duke-owned or third-party-owned GSA Facility, as applicable.

Consistent with the initial Program Application and as recognized in the Order, the GSA Facility will be a system asset, serving all native load customers and will not be directly serving the GSA Customer. As was determined by the Commission, both the 2- and 5-year administratively established avoided costs and the marginal hourly avoided costs were determined not to exceed avoided cost for purposes of N.C. Gen. Stat. § 62-159.2(e). In the case of either a third-party-owned or Duke-owned GSA Facility, the

amount to be recovered from all native load customers through the fuel adjustment clause will be equal to the amount due under the PPA (i.e., the applicable Bill Credit rate multiplied by the actual energy delivered by the GSA Facility). In this manner, non-participating customers will be held neutral, neither advantaged nor disadvantaged from the impact of the renewable energy procured on behalf of the GSA Customer.

The GSA Program is not "cost-contained" (*i.e.*, not all costs are "recovered from the participating customers") as was alleged by an intervenor in the proceeding. To the contrary, the cost to be recovered from non-participating customers for each MWh generated by GSA Facility is, in fact, the Bill Credit applicable to the particular GSA Service Agreement. Each MWh generated by the GSA Facility will displace a MWh that would have been generated by another system asset and, contrary to assertions raised in the proceeding, Duke is not recovering any fuel costs associated with that "displaced MWh."

IX. POST-TERM COST RECOVERY

In its Order, the Commission concluded that the market-based revenue authorized post-term for Duke-owned CPRE facilities was "extraordinary" and was not appropriate in the case of Duke-owned GSA facilities.[21] The Commission then asserted that public utilities (such as Duke) are "generally entitled to recover the costs of service, plus a reasonable return on capital invested to serve the utility's customers." The Commission then concluded by stating that there is "no compelling justification for departing from the general rule in this case."

[21] Order, at 63.

The Companies understand these statements establish a reasonable expectation that any Duke-owned GSA facilities will be entitled to cost of service-based recovery on the remaining Net Book Value of such assets post-term. To the extent the Commission's intent was different from this expectation, the Companies respectfully request the Commission provide clarification of its intent of how the Companies should plan to recover the cost of Duke-owned GSA facilities after the term of the GSA Program PPA expires.

[Reminder of page intentionally blank]

X. CONCLUSION

WHEREFORE, the Companies respectfully request the Commission to approve the GSA Program as amended herein.

Respectfully submitted this 18th day of March, 2019.

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ATTORNEYS FOR DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY, PROGRESS, LLC

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SUBJECT TO DUKE LEGAL AND MANAGEMENT APPROVAL

GREEN SOURCE ADVANTAGE SERVICE AGREEMENT
[*Self-Supply Version – Energy and Capacity and RECs*]

THIS GREEN SOURCE ADVANTAGE SERVICE AGREEMENT ("Service Agreement") is entered into on this _____ day of _____, 20__ by and between [_____] ("Customer"), _____ ("Renewable Supplier") and [Duke Energy Carolinas, LLC][Duke Energy Progress, LLC] ("Company"). Customer, Renewable Supplier and Company may each be referred to individually as a "Party" and collectively, as the "Parties."

WHEREAS, Customer has requested that Company purchase the Product (as defined herein) from Renewable Supplier;

WHEREAS, concurrently with the execution of this Service Agreement, Renewable Supplier shall execute and deliver to Company a power purchase agreement dated as of the date hereof in the form of Exhibit "A" attached hereto ("PPA"), pursuant to which Renewable Supplier shall sell the Product to Company at the contract price specified in the PPA;

WHEREAS, Customer has agreed to pay Company in accordance with the terms and conditions of this Service Agreement in exchange for a Bill Credit (as defined herein); and

WHEREAS, Company is willing to enter into a PPA with the Renewable Supplier to procure the Product as a system resource under and in accordance with the terms, conditions and rules of the Company's Green Source Advantage Program approved by the North Carolina Utilities Commission ("Commission"), as may be modified from time to time (the "GSA Tariff).

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

1. **Term:** This Service Agreement shall be effective upon execution and delivery by all the Parties hereto (the "Effective Date") and shall remain in full force and effect through [*insert date which is 60 days past delivery period specified in Section 4 below*] (the, "Term"). Provided however, if this Service Agreement is terminated for any reason prior to completion of the Term or otherwise expires, such termination or expiration shall not relieve any Party of any obligation accruing prior to the effectiveness of such termination or expiration.

2. **Supply Resource:** The Supply Resource shall consist of that certain [___MW] [solar photovoltaic] renewable energy facility located at [_____] (the "Supply Resource").

3. **Energy and Capacity; PPA**. The product purchased by Company under the PPA shall consist of Capacity and Energy (as defined in the PPA) produced by the Supply Resource and delivered to Company (the "Product") during the Term.

4. **Delivery Period**. The delivery period (the "Delivery Period") under this Service Agreement shall unless earlier terminated, begin on the Commercial Operation Date (as

defined in the PPA) and shall continue through the [*insert supply term selected by Customer from [2, 5, 10, 15, or 20 years (for Bill Credit calculated for a fixed term of either 2 or 5 years* using the methodology approved pursuant to N.C. Gen. Stat. § 62-156(c)*)] [1-20 years (for Bill Credit calculated based on hourly, marginal cost data)][years-corresponding to the Term of the PPA*] anniversary of the Commercial Operation Date.

5. **Subscribed Percentage**: The Customer hereby subscribes to [___%] of the nameplate DC capacity of the Supply Resource (the "Subscribed Percentage") . Notwithstanding the foregoing, Customer understands and agrees that the Supply Resource is an intermittent resource and neither Renewable Supplier nor Company are providing any guarantee, either under this Service Agreement or the PPA, regarding the amount of Product that will be generated by the Supply Resource. [If Customer has subscribed to less than the full capacity from the Supply Resource, Customer hereby acknowledges that one or more other parties may have subscribed for the remaining capacity, in which case, each subscribing party will be credited with its proportionate share of the output of the Supply Resource.]

6. **GSA Product Charge**. For the Subscribed Percentage of the MWhs generated by the Supply Resource and delivered to the Company, Customer shall be obligated to pay Company the price corresponding to the relevant portion of the Delivery Period as set forth in Exhibit "B" attached hereto ("GSA Product Charge").

7. **Assignment of Payments**.

   a. During the Term of this Service Agreement, Company hereby agrees to assign to Renewable Supplier all its right, title and interest in the GSA Product Charge actually received from Customer for any Product generated by the Renewable Resource and delivered to Company during each billing period (the "Assigned GSA Customer Payment").

   b. During the Term of this Service Agreement, Renewable Supplier hereby agrees to assign to Customer all its right, title and interest in the Subscribed Percentage of payments due from Company under the PPA (the "Assigned PPA Payment"), which shall be provided to Customer by Company in the form of a bill credit[1] ("Bill Credit") as discussed in more detail in Section 9.

8. **GSA Administrative Charge**. In addition to the GSA Product Charge, Customer shall pay a monthly administrative service charge in the amount specified in the GSA Tariff (the "GSA Administrative Charge") .

[1] The Bill Credit shall be equal to the contract price under the PPA which shall, as elected by the GSA Customer, be either (1) a 2- or 5-year avoided cost value calculated using the methodology approved pursuant to N.C. Gen. Stat. § 62-156(c) (provided however, for contract terms in excess of 5 years, the rate calculation shall be refreshed at five-year intervals until the end of the contract term) or hourly marginal rate as specified in the applicable GSA tariff.

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9. **Billing and Payment**. On a monthly basis, during the term of this Service Agreement, the following shall occur:

   a. Company shall determine the amount of Customer's proportionate share of energy (in MWh) generated by the Renewable Resource and delivered to Company ("Monthly Generation Amount").

   b. Customer shall pay to Company the GSA Product Charge multiplied by the Monthly Generation Amount.

   c. Pursuant to the assignment contained in Section 7(a), Company shall pay the Assigned GSA Customer Payment to Renewable Supplier within thirty (30) days after Company's receipt thereof from Customer.

   d. Pursuant to the assignment contained in Section 7(b), Company shall pay to Customer in the form of the Bill Credit a monthly amount that is equal to the Assigned PPA Payment multiplied by the Monthly Generation Amount.

   e. For the avoidance of doubt, Customer shall continue to pay its retail bill from Company.

   f. In addition to the foregoing, Company shall bill Customer, through Customer's retail bill, the GSA Administrative Service Charge for the prior month.

   g. [**Note: Applicable in the case of a GSA Customer with multiple accounts**] Company shall allocate the (1) Bill Credit and (2) the responsibility for the GSA Product Charge and the GSA Administrative Charge to the following accounts of Customer based on the percentages specified below:

Account [XXXXXXXX]	[20%]
Account [XXXXXXXX]	[30%]
Account [XXXXXXXX]	[30%]
Account [XXXXXXXX]	[20%]

10. **Quarterly Statements**. On a quarterly basis, Company will provide Customer a statement documenting the calculation of the Bill Credit during the previous calendar quarter.

11. **Renewable Energy Certificates**.

   a. **Purchase and Sale of REC Product**. During the Term of this Service Agreement, and without further consideration other than the assignment of the GSA Product Charge specified in Section 7(a), Renewable Supplier hereby agrees to sell and

Deliver all the REC Product to Customer, and Customer agrees to purchase and accept Delivery of the REC Product from Renewable Supplier, as set forth in this Service Agreement. Upon Delivery, title to and interest in the REC Product shall transfer from Renewable Supplier to Customer.

b. **Delivery of the REC Product**. Delivery of the REC Product ("Deliver" or "Delivery") shall be deemed to have occurred when the REC Product is transferred by the Renewable Supplier into the Customer's Account with the Tracking System. Customer and Renewable Supplier will each provide to the other any reasonably requested information or documentation required to effectuate Delivery of the REC Product, shall cooperate fully to effectuate Delivery of the REC Product, and shall comply with any and all applicable Tracking System procedures and any other applicable requirement relating to the recording and transfer of the REC Product.

c. **Definitions**. As used in this Article 11, capitalized terms not otherwise defined in this Service Agreement shall have the following meaning:

i. "**Account**" shall mean Customer's or Renewable Supplier's electronic account with the Tracking System.

ii. "**Applicable Program**" means [to be determined by Customer and Renewable Supplier]

iii. "**Environmental Attributes**" means an aspect, claim, characteristic or benefit, howsoever entitled, associated with the generation of a quantity of energy by the Supply Resource, separate and apart from the energy generated, and that is capable of being measured, verified or calculated, including any fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, offsets and allowances resulting from the purchase, generation or use of such quantity of energy or the avoidance of any emissions of any gas, chemical or other substance to the air, soil or water attributable to such quantity of energy or arising out of any present or future applicable law; provided, however, the "Environmental Attributes" shall exclude any and all state and federal production tax credits, any investment tax credits, tax incentives or tax grants, and any other tax credits, tax incentives or tax grants which are or will be generated or earned by the Supply Resource.

iv. "**REC Product**" means the RECs generated by the Supply Resource that meet the requirements set forth in this Service Agreement and that meet all of the requirements to qualify as a REC under the Applicable Program and includes the Environmental Attributes and Reporting Rights associated therewith.

v. "**Renewable Energy Certificate(s)"** or "REC(s)" shall mean a certificate, credit, allowance, green tag or other transferrable indicia, howsoever entitled, created by or pursuant to an Applicable Program and indicating the generation of one (1) megawatt hour of energy (or such other quantity as

may be specified by the Applicable Program) by an electric generation unit or other facility or installation that produces energy though the use of renewable fuels or processes acceptable under the relevant Applicable Program, separate from the energy produced.

vi. **"Reporting Rights"** means the right of the reporting person or entity to report that it owns the Environmental Attributes to any agency, authority or other party under any emissions trading or reporting program, public or private, which agency, authority or other party that has jurisdiction over or otherwise oversees or reviews the activities of such person.

vii. "**Tracking System**" means the verification system that accounts for the generation, sale, purchase, and/or retirement of RECs, which for purposes of this Agreement shall be [to be determined by Customer and Renewable Supplier].

12. **Effect of Termination of the Service Agreement on PPA.** In the event that this Service Agreement is terminated for any reason, the PPA shall remain in place between Renewable Supplier and Company and Company shall solely be required to make payments to Renewable Supplier for the Product produced by the Supply Resource and delivered to Company at the contract price and pursuant to the terms specified in the PPA. Based on the foregoing, the Parties hereby acknowledge and agree that in the event of a termination of this Service Agreement, the assignments contemplated in Section 7 and all payments to be made by Company to Renewable Supplier under Section 9 of this Service Agreement shall terminate and Renewable Supplier's sole compensation for Product produced by the Supply Resource and delivered to Company shall be pursuant to the terms of the PPA, including all Product delivered to the Company for which the Renewable Supplier does not receive the Assigned GSA Customer Payment due to the failure of Customer to pay the GSA Product Charge, regardless of whether such Product was delivered prior to or after the termination of this Service Agreement.

13. **Effect of Termination of the PPA on the Service Agreement.** In the event that the PPA is terminated for any reason, this Service Agreement shall be deemed terminated; provided that any amounts due and payable as of or arising prior to such termination shall be paid pursuant to the terms herein.

14. **Credit and Security**. No Party shall be required to post or provide performance assurance under this Service Agreement. If Customer or Renewable Supplier determines that it requires performance assurance for the transactions contemplated under this Service Agreement, such Party shall be solely responsible for negotiating a separate agreement for performance assurance between Customer and Renewable Supplier. In no event shall Company be required to provide performance assurance to any other Party with respect to the transactions covered under this Service Agreement.

15. **Set-off**. In addition to any rights of set-off a Party may have as a matter of law or otherwise and subject to applicable law, upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party

owed to the Non-Defaulting Party under this Agreement and any other agreement between the Defaulting Party and Non-Defaulting Party (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If Company is the Non-Defaulting Party and any such obligation is unascertained, Company 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 within a reasonable time after the amount of the obligation is ascertained.

16. **Events of Default.** 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:

a. Failure of a Party to make any payment required hereunder when due and such failure is not remedied within ten (10) days after the Defaulting Party's receipt of written notice of such failure from the Party to which such payment is due.

b. A default by Renewable Supplier under the terms of the PPA; provided that such default has not been remedied or cured in accordance with the terms of the PPA.

c. If a Party or its credit support provider (as applicable) (i) makes an assignment for the benefit of its creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action with respect to the Party or its credit support provider under any bankruptcy or similar law for the protection of creditors, (iii) has such petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing, (iv) becomes insolvent or, (v) is unable to pay its debts when due.

d. Failure by a Party to perform any of its material obligations hereunder (other than such failures described in clauses (a) through (c) of this Section 16), and such failure is not remedied within thirty (30) days after receipt by the Defaulting Party of written notice of such failure; provided, that so long as the Defaulting Party has initiated and is diligently attempting to effect a cure, the Defaulting Party's cure period shall extend for an additional reasonable period of time (not to exceed an additional thirty (30) days).

17. **Remedies Upon Default**. If an Event of Default has occurred and is continuing, then each non-defaulting Party to which such performance is due but has not been performed, as a result of the Event of Default (each such Party, a "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) suspend performance of its obligations under this Service Agreement until the Default has been remedied; and (b) 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 (such day, the "Early Termination Date") and pursue any and all remedies available to the Non-Defaulting Party under this Service Agreement or otherwise, at law or in equity, including, without limitation, the right

to liquidate and set off any amounts owed hereunder to the Defaulting Party and to pursue an action for damages against the Defaulting Party.

18. **Service Regulations**. Company's obligations under this Service Agreement shall be subject to the rules and requirements of the GSA Tariff and Company's Service Regulations approved by the Commission, as may be modified from time to time.

19. **Renewable Supplier's Performance**. Notwithstanding any provision in this Service Agreement to the contrary, all of Company's obligations under this Service Agreement are contingent on the proper performance by the Renewable Supplier of its obligations under the PPA. The failure or inability of the Renewable Supplier to honor its commitments under the PPA, shall excuse Company's performance under this Service Agreement.

20. **Confidentiality**. Any Party may publicly announce that it is purchasing or providing service or the Products to another Party under this Service Agreement, the type of renewable Supply Resource (e.g. a "solar facility"), and the term of this Service Agreement; *provided, however*, except as permitted herein, or otherwise required by applicable law, or to enforce the terms of this Agreement, or to the extent made public through no breach of this Agreement by a Party, the Parties shall keep confidential all other information concerning the terms and conditions of this Service Agreement or the PPA.

21. **Regulatory Disclosures by Company**. This section will apply notwithstanding anything to the contrary in this Service Agreement. Customer and Renewable Supplier acknowledge that Company is regulated by various regulatory and market monitoring entities. Company is permitted, in its sole discretion, to disclose or to retain any information regarding this Service Agreement (including confidential information) to any regulatory commission in all state and federal jurisdictions in which Company does business (including but not limited to the NCUC, SCPSC, and FERC), NERC, market monitor, office of regulatory staff, and/or public staff, or any other regulator or legislative body without providing prior notice or obtaining the consent of the other Party or Parties, using Company's business judgment and the appropriate level of confidentiality Company 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 Company, the confidential treatment of this Service Agreement and its terms 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 Service Agreement.

22. **Publicity**. No Party shall make any use of any other Party's (or its affiliate's) name, logo, or likeness in any publication, promotional material, news release, or similar publicity material without the Party's prior review, approval, and written consent; *provided, however*, any issuance or material approved by Company shall be limited to the non-confidential facts and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of any Supply Resource.

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23. **Limitations of Liabilities.** NO PARTY SHALL BE LIABLE UNDER THIS SERVICE AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, ANY OTHER INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, TORT, CONTRACT, OR OTHERWISE. Customer agrees and understands that any and all payments, rates, charges, and/or damages permitted under the GSA Tariff are and shall be deemed direct obligations and will not be excluded from liability or recovery under the Limitations of Liabilities provisions.

24. **Mutual Representations**. Each Party hereby represents and warrants to the other Parties the following, that: (i) such Party has the capacity, authority, and power to execute, deliver, and perform under this Service Agreement; (ii) this Service Agreement constitutes legal, valid, and binding obligations enforceable against such Party; (iii) the person who executes this Service Agreement on behalf of such Party has full and complete authority to execute and bind such Party to this Service Agreement as an authorized representative of such Party; (iv) such Party is acting on its own behalf and has made its own independent decision to bind itself under this Service Agreement; and, (v) such Party has completely read, fully understands, and voluntarily accepts every provision of this Service Agreement.

25. **Governing Law**. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.

26. **Successors; Amendments**. This Service Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto. No amendment, modification, or change to this Service Agreement shall be enforceable unless agreed upon in a writing that is executed by each of the Parties hereto.

27. **Non-Waiver**. No Party will be deemed to have waived the exercise of any right that it holds under this Service Agreement or at law unless such waiver is expressly made in writing. Failure of a Party at any time, and for any length of time, to require performance by the other Party of any obligation under this Service Agreement shall in no event affect the right to require performance of that obligation or the right to claim remedies for breach under the Service Agreement or at law. No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Service Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

28. **Counterparts**. This Service Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument. Delivery by a Party of an executed counterpart of a signature page of this Agreement by facsimile or electronic transmission (including PDF file) shall be effective as delivery of a manually executed counterpart hereof.

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SIGNATURE PAGE FOLLOWS

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IN WITNESS WHEREOF, on the date set forth below, Company, Customer and Renewable Supplier have caused this Service Agreement to be executed by their respective duly authorized representatives.

[DUKE ENERGY CAROLINAS, LLC] [DUKE ENERGY PROGRESS, LLC]	[RENEWABLE SUPPLIER]
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

[CUSTOMER]

By: _____
Name: _____
Title: _____
Date: _____

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Exhibit A
Form of Power Purchase Agreement

[Attach Exhibit A]

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Exhibit B
Schedule of Product Charge

~~Duke Energy Carolinas, LLC~~
~~Duke Energy Progress, LLC~~
~~Docket Nos. E-2, Sub 1170 and E-7, Sub 1169~~
~~ATTACHMENT B~~

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GREEN SOURCE ADVANTAGE SERVICE AGREEMENT

[*Self-Supply Version – Energy and Capacity ~~Only~~and RECs*]

THIS GREEN SOURCE ADVANTAGE SERVICE AGREEMENT ("Service Agreement") is entered into on this _____ day of _____, _____, 20__ by and between ~~[~~_____~~]~~[_____] ("Customer"), _____ ("Renewable Supplier") and [Duke Energy Carolinas, LLC][Duke Energy Progress, LLC] ("Company"). Customer, Renewable Supplier and Company may each be referred to individually as a "Party" and collectively, as the "Parties."

WHEREAS, Customer has requested that Company purchase the ~~Energy and Capacity generated by the Supply Resource,~~ Product (as defined ~~below,~~herein) from Renewable Supplier;

WHEREAS, concurrently with the execution of this Service Agreement, Renewable Supplier shall execute and deliver to Company a power purchase agreement dated as of the date hereof in the form of Exhibit "A" attached hereto ("PPA"), pursuant to which Renewable Supplier shall sell the Product to Company at the contract price specified in the PPA;

WHEREAS, Customer has agreed to pay Company in accordance with the terms and conditions of this Service Agreement in exchange for a Bill Credit (as defined herein); and

WHEREAS, Company is willing to enter into a PPA with the Renewable Supplier to procure the Product as a system resource under and in accordance with the terms, conditions and rules of the Company's Green Source Advantage Program ~~Rider~~ approved by the North Carolina Utilities Commission ("Commission"), as may be modified from time to time (the "GSA ~~Program"); and~~Tariff).

~~**WHEREAS**, Company has agreed to procure the Energy and Capacity generated from the Supply Resource at the request and on behalf of the Custom under and in accordance with the terms and conditions of the GSA Program and this Service Agreement; and~~

~~**WHEREAS**, Customer has agreed to pay Company in accordance with the terms and conditions of this Service Agreement for the Energy and Capacity generated by the Supply Resource and delivered to Company.~~

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

1. **Term:** This Service Agreement shall be effective upon execution and delivery by ~~both Company and Customer~~all the Parties hereto (the "Effective Date~~"),~~") and shall remain in full force and effect through [*insert date which is 60 days past delivery period specified in*

~~Duke Energy Carolinas, LLC~~
~~Duke Energy Progress, LLC~~
~~Docket Nos. E-2, Sub 1170 and E-7, Sub 1169~~
~~ATTACHMENT B~~

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Section 4 below] (the, "Term"). ~~Customer understands and agrees that~~ Provided however, if this Service Agreement is terminated for any reason prior to completion of the Term or otherwise expires, such termination or expiration shall not relieve any ~~party~~Party of any obligation accruing prior to the effectiveness of such termination or expiration. ~~Furthermore, any obligations or liabilities that by their nature or express terms extend beyond the termination or expiration of this Service Agreement, including, without limitation, provisions relating to rates, billing, early termination charges, damages, limitations of liabilities, and any other provisions necessary to interpret or enforce rights and obligations shall survive the expiration or termination of this Service Agreement.~~

2. **Supply Resource:** The Supply Resource shall consist of that certain ~~[mw ~~[MW] [solar photovoltaic] renewable energy facility located at ~~[ ]~~[ ] (the "Supply Resource").

3. **Energy and Capacity; PPA**. The product purchased by Company ~~at~~under the ~~request~~PPA shall consist of ~~Customer (the "Product") includes the Energy and~~ Capacity and Energy (as defined in the PPA) produced by the Supply Resource and delivered to Company ~~pursuant to that certain Power Purchase Agreement entered into between Company and ~~ (the "Renewable Supplier") dated as of ~~ a copy of which is attached hereto as Exhibit "A" (the "PPA"). Defined terms used in this Section 3 which are not defined herein shall have the meaning ascribed to such terms in the PPA~~(the "Product") during the Term.

4. **Delivery Period**. The delivery period (the "Delivery Period") under this Service Agreement shall unless earlier terminated, begin on the Commercial Operation Date ~~of the Supply Resource ((~~as defined in the PPA) and shall continue through the [*insert supply term selected by Customer ~~ from ~~the following term options: [~~2, 5, 10, 15, or 20 years (for Bill Credit calculated for a fixed term of either 2 or 5 years* using the methodology approved pursuant to N.C. Gen. Stat. § 62-156(c))] *[1-20 years (for Bill Credit calculated based on hourly, marginal cost data)][years- corresponding to the Term of the PPA*] anniversary of the Commercial Operation ~~date~~Date.

5. ~~**Estimated Annual Quantity**: The annual quantity of Product reserved by Customer hereunder shall be [xx] MW of Capacity and Energy based on the Supply Resource's nameplate Capacity rating (the "Estimated Quantity"); Provided however~~**Subscribed Percentage**: The Customer hereby subscribes to [%] of the nameplate DC capacity of the Supply Resource (the "Subscribed Percentage") . Notwithstanding the foregoing, Customer understands and agrees that the Supply Resource is an intermittent resource ~~without production guarantees, and Company~~ and neither Renewable Supplier nor Company are providing any guarantee, either under this Service Agreement or the PPA, regarding the amount of Product that will ~~supply the Product~~ be generated by the Supply Resource~~.~~. [If Customer has subscribed to less than the full capacity from the Supply Resource, Customer hereby acknowledges that one or more other parties may have

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subscribed for the remaining capacity, in which case, each subscribing party will be credited with its proportionate share of the output of the Supply Resource.]

6. **GSA Product Charge**. For the Subscribed Percentage of the MWhs generated by the Supply Resource and delivered to the Company, Customer shall be obligated to pay Company the price corresponding to the relevant portion of the Delivery Period as set forth in Exhibit "B" attached hereto ("GSA Product Charge").

7. **Assignment of Payments**.

a. During the Term of this Service Agreement, Company hereby agrees to assign to Renewable Supplier all its right, title and interest in the GSA Product Charge actually received from Customer for any Product generated by the Renewable Resource and delivered to Company ~~under the PPA, which may be more than or less than~~ during each billing period (the ~~Estimated Quantity.~~"Assigned GSA Customer Payment").

~~1. **Rates for the Product**. The rates for the Product delivered to Company under the PPA as contemplated hereunder shall be as set forth in the PPA.~~

~~2. **No Renewable Energy Certificates**. No renewable energy certificates or environmental attributes (collectively, "RECs") are included under this Services Agreement and in no event shall Company be responsible for procuring, managing, reporting or retiring any RECs associated with the power generated by the Supply Resource for or on behalf of Customer under this Service Agreement or otherwise. Any agreement(s) for the procurement by Customer of RECs generated by the Supply Resource or any further adjustment to the Product rates, if any, shall be solely between Customer and the Renewable Supplier.~~

b. During the Term of this Service Agreement, Renewable Supplier hereby agrees to assign to Customer all its right, title and interest in the Subscribed Percentage of payments due from Company under the PPA (the "Assigned PPA Payment"), which shall be provided to Customer by Company in the form of a bill credit[1] ("Bill Credit") as discussed in more detail in Section 9.

~~5.~~8. **GSA Administrative ~~Service~~ Charge**. ~~As a participant in~~ In addition to the GSA ~~Program the~~Product Charge, Customer ~~will be charged~~shall pay a monthly administrative service ~~for primary and (xx) additional accounts as set forth~~charge in the amount specified in the GSA ~~Rider Program~~Tariff (the "GSA Administrative ~~Service~~ Charge~~").~~") .

[1] The Bill Credit shall be equal to the contract price under the PPA which shall, as elected by the GSA Customer, be either (1) a 2- or 5-year avoided cost value calculated using the methodology approved pursuant to N.C. Gen. Stat. § 62-156(c) (provided however, for contract terms in excess of 5 years, the rate calculation shall be refreshed at five-year intervals until the end of the contract term) or hourly marginal rate as specified in the applicable GSA tariff.

~~Duke Energy Carolinas, LLC~~
~~Duke Energy Progress, LLC~~
~~Docket Nos. E-2, Sub 1170 and E-7, Sub 1169~~
~~ATTACHMENT B~~

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9. **Billing**~~. In addition to its normal~~ **and Payment**. On a monthly basis, during the term of this Service Agreement, the following shall occur:

a. Company shall determine the amount of Customer's proportionate share of energy (in MWh) generated by the Renewable Resource and delivered to Company ("Monthly Generation Amount").

b. Customer shall pay to Company the GSA Product Charge multiplied by the Monthly Generation Amount.

c. Pursuant to the assignment contained in Section 7(a), Company shall pay the Assigned GSA Customer Payment to Renewable Supplier within thirty (30) days after Company's receipt thereof from Customer.

d. Pursuant to the assignment contained in Section 7(b), Company shall pay to Customer in the form of the Bill Credit a monthly amount that is equal to the Assigned PPA Payment multiplied by the Monthly Generation Amount.

e. For the avoidance of doubt, Customer shall continue to pay its retail bill from Company~~,~~.

~~a.~~f. In addition to the foregoing, Company shall bill Customer~~ will be billed for~~, through Customer's retail bill, the GSA Administrative Service Charge ~~and the total cost of the Product delivered to Company under the PPA during each billing period (on a one-~~for the prior month~~-lag). Amounts paid to Company under the consolidated bill will be applied first to Customer's normal retail bill and then to this Service Agreement.~~.

~~3.~~ [**Note: Applicable in the case of a GSA Customer with multiple accounts**] Company shall allocate the (1) Bill Credit ~~**for Power**: A monthly bill credit (on a one-month lag) for the avoided capacity~~ and ~~energy expense associated with the Energy~~(2) the responsibility for the GSA Product Charge and ~~Capacity delivered~~the GSA Administrative Charge to ~~Company from the Supply Resource during the applicable billing period shall be provided to Customer (the "Bill Credit"). The Bill Credit shall be~~ the following accounts of Customer based on the ~~lesser of:~~

~~a. The rates, as~~percentages specified ~~in Section 6 above for Energy and Capacity delivered to Company from the Supply Resource during the billing period; or~~

~~b. The Company's avoided cost rate (as of the Effective Date), calculated as follows:~~

~~i. For PPAs with a term of 2 years the Company's avoided cost rate shall be the Company's 2 year forecasted avoided cost rate, calculated by the Company based~~

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upon the methodology approved by the Commission, for the full term of the applicable PPA;

ii. For PPAs with a term of 5, 10, or 15 years the Company's avoided cost rate shall be the Company's 5 year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full term of the applicable PPA; and

iii. For PPAs with a term of 20 years, the Company's avoided cost rate shall be deemed to be the capacity-weighted average price of all proposals that have been selected to supply Standard Offer GSA Program capacity under the request for proposal issued by Company on [insert date of RFP] - (the "RFP") under the Competitive Procurement of Renewable Energy Program instituted by Company pursuant to N.C. Gen. Stat. Section 62-110.8 (the "CPRE Program"), minus the GSA REC Value as determined by Company in a commercially reasonable manner; provided however, if no proposals have been selected to supply the GSA Program under the RFP, the Company's avoided cost rate shall be the Company's 5 year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full 20 year term of the PPA.

4. **Security**:

a. **Performance Assurance**. Upon execution of this Service Agreement, Customer shall provide to Company and maintain for the benefit of Company Performance Assurance in the [following amount: $_____] (the "Posting Requirement") as may be adjusted from time to time in accordance with this Article 12. Customer shall ensure that the Performance Assurance will remain in full force and effect, and outstanding in the required amount throughout the Term and for 90 days thereafter. To secure Customer's obligations of payment and performance under this Service Agreement, Customer grants to Company a present and continuing first priority security interest in and lien on all present and future Performance Assurance. Customer agrees to take such actions as Company requires to perfect Company's first-priority security interest in and lien on the Performance Assurance and liquidation of its proceeds, as applicable. Upon an Event of a Default by Customer, Company shall be entitled to draw on and retain the proceeds of any Performance Assurance to secure Customer's obligations hereunder, or to pay, net, recoup, set-off, liquidate, or otherwise receive payment of any amounts owed to Company under this Service Agreement. Customer's failure to fully maintain or provide Performance Assurance or otherwise fully comply with this Article 12 shall be a default by Customer and shall entitle Company to early termination damages as set forth herein.

b.g. **Unsecured Credit Threshold Matrix**. For a Customer, or its Guarantor as applicable, that is Creditworthy and is not in default of any provisions under this Service Agreement or under its normal retail bill, shall be granted an unsecured

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~~credit limit under this Service Agreement only based on the~~ below ~~stated thresholds. In the event that the Credit Rating of Customer or its Guarantor changes during the Term of this Service Agreement, the amount of unsecured credit, if any, granted to Customer will be adjusted accordingly.~~:

~~Credit Rating of the Customer or its Guarantor~~Account [XXXXXXXX]	[20%]	~~Maximum Credit Limit (calculated as the lesser of the percentage of TNW and the applicable Credit Limit Cap below)~~				
~~S&P~~Account [XXXXXXXX]	~~Moody's~~[30%]	~~Fitch~~	~~Percentage of TNW~~	~~Credit Limit Cap~~	~~Security Required (1)~~	~~Posting Requirement (2)~~
~~AA and above~~Account [XXXXXXXX]	~~Aa3 and above~~[30%]	~~AA and above~~	~~16%~~	~~$35,000,000~~	~~TBD~~	~~TBD~~
~~A-, A, A+~~	~~A3, A2, A1~~	~~A-, A, A+~~	~~16%~~	~~$25,000,000~~	~~TBD~~	~~TBD~~
~~BBB+~~ Acco	~~Baal~~	~~BBB+~~	~~10%~~	~~$~~[20~~,000,000~~%]	~~TBD~~	~~TBD~~

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unt [XXXXXXXX]						
~~BBB~~	~~Baa1~~	~~BBB~~	~~10%~~	~~$15,000,000~~	~~TBD~~	~~TBD~~
~~BBB-~~	~~Baa3~~	~~BBB-~~	~~8%~~	~~$10,000,000~~	~~TBD~~	~~TBD~~
~~BB+~~	~~Ba1~~	~~BB+~~	~~2%~~	~~$,2,000,000~~	~~TBD~~	~~TBD~~
~~BB~~	~~Ba2~~	~~BB~~	~~1%~~	~~$1,000,000~~	~~TBD~~	~~TBD~~
~~BB-~~	~~Ba3~~	~~BB-~~		~~0~~	~~TBD~~	~~TBD~~

10. ~~(1) 5%~~**Quarterly Statements**. On a quarterly basis, Company will provide Customer a statement documenting the calculation of the ~~total cost of the Estimated Quantity of~~ Bill Credit during the previous calendar quarter.

11. **Renewable Energy Certificates**.

a. **Purchase and Sale of REC Product**. During the Term of this Service Agreement, and without further consideration other than the assignment of the GSA Product Charge specified in Section 7(a), Renewable Supplier hereby agrees to sell and Deliver all the REC Product to Customer, and Customer agrees to purchase and accept Delivery of the REC Product from Renewable Supplier, as set forth in this Service Agreement. Upon Delivery, title to and interest in the REC Product shall transfer from Renewable Supplier to Customer.

b. **Delivery of the REC Product**. Delivery of the REC Product ("Deliver" or "Delivery") shall be deemed to have occurred when the REC Product is transferred by the Renewable Supplier into the Customer's Account with the Tracking System.

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Customer and Renewable Supplier will each provide to the other any reasonably requested information or documentation required to effectuate Delivery of the REC Product, shall cooperate fully to effectuate Delivery of the REC Product, and shall comply with any and all applicable Tracking System procedures and any other applicable requirement relating to the recording and transfer of the REC Product.

c. **Definitions.** ~~be delivered~~ As used in this Article 11, capitalized terms not otherwise defined in this Service Agreement shall have the following meaning:

i. "**Account**" shall mean Customer's or Renewable Supplier's electronic account with the Tracking System.

ii. "**Applicable Program**" means [to be determined by Customer and Renewable Supplier]

iii. "**Environmental Attributes**" means an aspect, claim, characteristic or benefit, howsoever entitled, associated with the generation of a quantity of energy by the Supply Resource, separate and apart from the energy generated, and that is capable of being measured, verified or calculated, including any fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, offsets and allowances resulting from the purchase, generation or use of such quantity of energy or the avoidance of any emissions of any gas, chemical or other substance to the air, soil or water attributable to such quantity of energy or arising out of any present or future applicable law; provided, however, the "Environmental Attributes" shall exclude any and all state and federal production tax credits, any investment tax credits, tax incentives or tax grants, and any other tax credits, tax incentives or tax grants which are or will be generated or earned by the Supply Resource.

iv. "**REC Product**" means the RECs generated by the Supply Resource that meet the requirements set forth in this Service Agreement and that meet all of the requirements to qualify as a REC under the Applicable Program and includes the Environmental Attributes and Reporting Rights associated therewith.

v. "**Renewable Energy Certificate(s)"** or "REC(s)" shall mean a certificate, credit, allowance, green tag or other transferrable indicia, howsoever entitled, created by or pursuant to an Applicable Program and indicating the generation of one (1) megawatt hour of energy (or such other quantity as may be specified by the Applicable Program) by an electric generation unit or other facility or installation that produces energy though the use of renewable fuels or processes acceptable under the relevant Applicable Program, separate from the energy produced.

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vi. **"Reporting Rights"** means the right of the reporting person or entity to report that it owns the Environmental Attributes to any agency, authority or other party under any emissions trading or reporting program, public or private, which agency, authority or other party that has jurisdiction over or otherwise oversees or reviews the activities of such person.

vii. "**Tracking System**" means the verification system that accounts for the generation, sale, purchase, and/or retirement of RECs, which for purposes of this Agreement shall be [to be determined by Customer and Renewable Supplier].

~~6.~~12. **Effect of Termination of the Service Agreement on PPA** ~~as estimated at the time of inception.~~. In the event that this Service Agreement is terminated for any reason, the PPA shall remain in place between Renewable Supplier and Company and Company shall solely be required to make payments to Renewable Supplier for the Product produced by the Supply Resource and delivered to Company at the contract price and pursuant to the terms specified in the PPA. Based on the foregoing, the Parties hereby acknowledge and agree that in the event of a termination of this Service Agreement, the assignments contemplated in Section 7 and all payments to be made by Company to Renewable Supplier under Section 9 of this Service Agreement shall terminate and Renewable Supplier's sole compensation for Product produced by the Supply Resource and delivered to Company shall be pursuant to the terms of the PPA, including all Product delivered to the Company for which the Renewable Supplier does not receive the Assigned GSA Customer Payment due to the failure of Customer to pay the GSA Product Charge, regardless of whether such Product was delivered prior to or after the termination of this Service Agreement.

~~(2) Greater~~**Effect of** ~~zero or (Security minus Maximum Credit Limit)~~

~~a.~~ ~~(3)~~ **Termination of the PPA on the Service Agreement.** In the event that ~~Customer enters into multiple agreements under the GSA Program, then the Security Required shall be aggregated across all such agreements and such aggregate amount, along with~~ the ~~Credit Limit Cap reflected in the above table based on the Credit Rating of Customer or its Guarantor, will be used~~PPA is terminated for ~~the purpose of determining the Posting Requirement in aggregate for all such agreements. If an entity wishes to act as Guarantor for multiple agreements under the GSA Program, then the Maximum Credit Limit Cap as established herein will be allocated to such agreements in the amounts requested by the Guarantor.~~

~~b. **Definitions.** Except as otherwise defined herein, Capitalized terms used in this Article 10 shall have the following meanings:~~

~~i. "Credit Rating" means, with respect to~~ any ~~applicable entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not~~

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~~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. If the entity is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the entity is rated by three rating agencies and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. If an entity is not rated and requests that the Company assess its creditworthiness, then the Credit Rating shall be established by the Company in its sole discretion. In any case, the Credit Rating may be revised to reflect ongoing developments such as changes in agency ratings or material changes in an entity's financial results as they occur.~~

~~ii. "Creditworthy" or "Creditworthiness" - means (i) a Person with an investment grade 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, and (ii) has satisfactory and verifiable creditworthiness determined in Company's sole discretion. Notwithstanding the foregoing, an entity that does not have such a rating may submit complete audited financial statements (or substantially equivalent information certified by an appropriate officer of such entity) for review by the Company, which shall make a determination of the entity's creditworthiness and assign an appropriate rating on a commercially reasonable basis for purposes of this Agreement. Unaudited or incomplete financial information will negatively impact the assigned rating.~~

~~7.~~13. ~~"Guarantor" means any Creditworthy Person having the authority and agreeing to guarantee the Customer's obligations under~~reason, this Service Agreement ~~and is otherwise acceptable to Company in its sole discretion.~~shall be deemed terminated; provided that any amounts due and payable as of or arising prior to such termination shall be paid pursuant to the terms herein.

~~iii. "Guaranty" means a parent company guaranty, in substantially the form set forth in Exhibit B attached hereto, provided by a Guarantor in favor of Company guaranteeing the obligations of Customer~~ **Credit and Security**. No Party shall be required to post or provide performance assurance under this Service Agreement.

~~iv. "Fitch" - means Fitch Ratings Ltd. or its successor. If Fitch ceases to exist or publish ratings, Fitch will mean a nationally recognized rating agency mutually agreed upon by the Parties.~~

~~v. "Letter(s) of Credit" means one or more irrevocable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank, which is not an affiliate of Customer, which has and maintains a credit rating of at least A- from~~

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S&P and A3 from Moody's, in substantially the form set forth in in Exhibit C attached hereto, or in such other form as Company deems acceptable in its sole discretion.

8.14. Material Adverse Change. A Material Adverse Change occurs with respect to Customer or its Guarantor if one exists, if (i) there is any material change in the condition (financial or otherwise), Credit Rating, net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of Customer or its Guarantor to fulfill its obligations If Customer or Renewable Supplier determines that it requires performance assurance for the transactions contemplated under this Service Agreement or the guaranty as applicable; or (ii) there are reasonable grounds to believe that the Creditworthiness of such Person has become unsatisfactory or its ability to perform, such Party shall be solely responsible for negotiating a separate agreement for performance assurance between Customer and Renewable Supplier. In no event shall Company be required to provide performance assurance to any other Party with respect to the transactions covered under this Service Agreement or the Guaranty (if applicable) has been materially impaired.

vi. "Moody's" means Moody's Investors Service, Inc. or any successor rating agency thereto.

vii. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or governmental authority.

viii. "Performance Assurance" means collateral required under this Service Agreement in the form of: (I) cash, (ii) one or more Letter(s) of Credit, or a Guaranty acceptable to Company in its sole discretion, in each case that meets the requirements set forth in this Service Agreement, provided by Customer to Company, as credit support, adequate assurances, and security to secure Customer's payment and performance obligations under this Service Agreement.

ix. "Rating Agency" or "Rating Agencies" means the rating entities of S&P, Moody's or Fitch.

x. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor rating agency thereto.

xi. "TNW" means tangible net worth, calculated as total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles.

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~~c. **Adequate Assurances**. In the event that a Material Adverse Change has occurred and without limiting any payment obligations or any other existing performance assurance obligation, if any, set forth herein, Company may, from time to time, request, in writing, that Customer provide Company with Performance Assurance, including an additional amount of Performance Assurance over the amounts specified in Section 12(a) above, in an amount reasonably determined by Company. In the event that Customer fails to provide the required amount of such Performance Assurance to Company within five (5) business days of receipt of Company's notice requesting the new or additional Performance Assurance, then Company may declare such failure an Event of Default and exercise any or all other remedies provided for hereunder or pursuant to law or equity.~~

~~d. **Financial Disclosures**. Customer shall timely provide to Company financial information of Customer as follows: (i) within 120 days after the end of each fiscal year that this Service Agreement is effective a copy of Customer's annual report containing audited consolidated financial statements for such fiscal year; and, (ii) upon request of Company, a copy of Customer's most recent quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Customer attesting to their accuracy. The statements shall be prepared in accordance with generally accepted accounting principles or other procedures with which Customer is required to comply with under applicable law. If such information is available on a publicly available web site, then this requirement shall be deemed to be satisfied.~~

~~9.~~15. **Set-off**. In addition to any rights of set-off a Party may have as a matter of law or otherwise and subject to applicable law, upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party under this Agreement and any other agreement between the ~~Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party under this Agreement and any other agreement between the Parties~~Defaulting Party and Non-Defaulting Party (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). ~~If~~ If Company is the Non-Defaulting Party and any such obligation is unascertained, ~~the Non-Defaulting Party~~Company 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 within a reasonable time after the amount of the obligation is ascertained.

~~10.~~16. **Events of Default.** 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:

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a. Failure ~~by Customer~~of a Party to make any payment required hereunder when due ~~if~~and such failure is not remedied within ten (10) days after the Defaulting Party's receipt of written notice of such failure from the Party to which such payment is due.

~~e. Failure of Customer to perform any of its obligations~~A default by Renewable Supplier under ~~Article 12 and such failure continues for a period of five (5) business days after receipt by Customer of written notice of such failure.~~

b. ~~Failure by a Party to perform any of its material obligation hereunder (other than such failures described in clauses (a), (b) and (d) of this Section 13), and such failure is not remedied within thirty (30) days after receipt by~~ the ~~defaulting Party of written notice of such failure~~terms of the PPA; provided~~,~~ that ~~so long as the defaulting Party~~such default has ~~initiated and is diligently attempting to effect a cure,~~not been remedied or cured in accordance with the ~~defaulting Party's cure period shall extend for an additional reasonable period of time (not to exceed an additional thirty (30) days).~~terms of the PPA.

c. If a Party or its ~~Guarantor~~credit support provider (as applicable) (i) makes an assignment for the benefit of its creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action with respect to the Party or its credit support provider under any bankruptcy or similar law for the protection of creditors, (iii) has such petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing, (iv) becomes insolvent or, (v) is unable to pay its debts when due.

d. Failure by a Party to perform any of its material obligations hereunder (other than such failures described in clauses (a) through (c) of this Section 16), and such failure is not remedied within thirty (30) days after receipt by the Defaulting Party of written notice of such failure; provided, that so long as the Defaulting Party has initiated and is diligently attempting to effect a cure, the Defaulting Party's cure period shall extend for an additional reasonable period of time (not to exceed an additional thirty (30) days).

17. **Remedies Upon Default**. If an Event of Default ~~with respect to a Defaulting Party has~~ has occurred and is continuing, then ~~the other Party (such Party, the~~ each non-defaulting Party to which such performance is due but has not been performed, as a result of the Event of Default (each such Party, a "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~~suspend performance of its obligations under this Service Agreement~~; (b) suspend performance under this Agreement~~ until the Default has been remedied; and~~/or (c~~ (b) 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")~~(such day, the "Early Termination Date") and pursue any and all remedies available to the Non-Defaulting Party under this Service Agreement or otherwise, at law or in equity, including, without limitation, the right to liquidate and set off any amounts owed hereunder to the Defaulting Party and to pursue an action for damages against the Defaulting Party.

~~5. **Early Termination Payment**. Customer understands and agrees that Customer's request and commitment for service under the GSA Program requires Company to secure the supply of the Product as requested by Customer. Customer understands and agrees that if the Customer, including any representative receiver or trustee appointed to act on behalf of the Customer rejects or terminates this Service Agreement prior the expiration of the Term; or if an Early Termination Date has been established as a result of a Customer Event of Default, then Customer shall pay to the Company early termination charges in the amount specified in the termination schedule attached hereto as Exhibit "D" (the "Termination Schedule") corresponding to the date of the termination, which shall be due and payable immediately upon the effective date of the early termination of this Service Agreement and may be set off against the Performance Assurance. This Section shall survive any early termination or expiration of this Agreement.~~

~~11.~~18. **Service Regulations**. Company's obligations under this Service Agreement shall be subject to the rules and requirements of the GSA ~~Program~~Tariff and Company's Service Regulations approved by the Commission, as may be modified from time to time.

~~12.~~19. **Renewable ~~Suppliers~~Supplier's Performance**. Notwithstanding any provision ~~to the contrary set forth~~ in this Service Agreement to the contrary, all of Company's obligations under this Service Agreement are contingent on the proper performance ~~of~~by the Renewable Supplier of its obligations under the PPA. The failure or inability of the Renewable Supplier to honor its commitments under the PPA, shall excuse Company's performance under this Service Agreement ~~to the extent such performance is prevented thereby. Company shall make a good faith attempt to enforce its rights under the PPA but shall be under no obligation to litigate any dispute or bring suit against the Renewable Supplier.~~.

~~6. **Termination of the PPA**. In the event that the PPA is terminated, for any reason other than as a result of Company's default, prior to the end of the Term, then this Service Agreement will also terminate effective as of the date that the PPA is terminated and Company will have no further obligations hereunder.~~

~~13.~~20. **Confidentiality**. ~~Customer~~Any Party may publicly announce that it is purchasing or providing service ~~from Company~~or the Products to another Party under this Service

Agreement, the type of renewable Supply Resource (e.g. a "solar facility"), and the ~~Term~~term of this Service Agreement; *provided, however*, ~~Customer shall not publicize and~~except as permitted herein, or otherwise required by applicable law, or to enforce the terms of this Agreement, or to the extent made public through no breach of this Agreement by a Party, the Parties shall keep confidential all other information concerning the ~~Supply Resource and~~ terms and conditions ~~set forth in~~of this Service Agreement~~.~~ or the PPA.

21. **Regulatory Disclosures by Company**. This section will apply notwithstanding anything to the contrary in this Service Agreement. Customer and Renewable Supplier acknowledge that Company is regulated by various regulatory and market monitoring entities. Company is permitted, in its sole discretion, to disclose or to retain any information regarding this Service Agreement (including confidential information) to any regulatory commission in all state and federal jurisdictions in which Company does business (including but not limited to the NCUC, SCPSC, and FERC), NERC, market monitor, office of regulatory staff, and/or public staff, or any other regulator or legislative body without providing prior notice or obtaining the consent of the other Party or Parties, using Company's business judgment and the appropriate level of confidentiality Company 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 Company, the confidential treatment of this Service Agreement and its terms 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 Service Agreement.

~~14.~~22. **Publicity**. ~~Neither Customer nor Company~~ No Party shall make any use of ~~the~~any other Party's (or its affiliate's) name, logo, or likeness in any publication, promotional material, news release, or similar publicity material without the ~~other~~ Party's prior review, approval, and written consent; *provided, however*, any issuance or material approved by Company shall be limited to the non-confidential facts and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of any Supply Resource.

~~15.~~23. **Limitations of Liabilities.** ~~*NEITHER COMPANY NOR CUSTOMER*~~ NO PARTY SHALL BE LIABLE UNDER THIS SERVICE AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, ~~*PUBLICITY, REPUTATIONAL, OR*~~ ANY OTHER INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, TORT, CONTRACT, OR OTHERWISE. Customer agrees and understands that any and all payments, rates, charges, and/or damages permitted under the ~~Rider~~ GSA Tariff are and shall be deemed direct obligations and will not be excluded from liability or recovery under the Limitations of Liabilities provisions.

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~~16.~~24. **Mutual Representations**. ~~Customer and Company each~~ Each Party hereby represents and warrants to the other Parties the following, that: (i) ~~each~~such Party has the capacity, authority, and power to execute, deliver, and perform under this Service Agreement; (ii) this Service Agreement constitutes legal, valid, and binding obligations enforceable against ~~it~~such Party; (iii) ~~each~~the person who executes this Service Agreement on behalf of ~~each party~~such Party has full and complete authority to execute and bind such ~~party~~Party to this Service Agreement as an authorized representative of such ~~party~~Party; (iv) ~~each~~such Party is acting on its own behalf and has made its own independent decision to bind itself under this Service Agreement; and, (v) ~~each~~such Party has completely read, fully understands, and voluntarily accepts every provision of this Service Agreement.

~~17.~~25. **Governing Law**. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.

~~18.~~26. **Successors; Amendments**. This Service Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto. No amendment, modification, or change to this Service Agreement shall be enforceable unless agreed upon in a writing that is executed by each of the Parties hereto.

~~19.~~27. **Non-Waiver**. ~~Neither~~ No Party will be deemed to have waived the exercise of any right that it holds under this Service Agreement or at law unless such waiver is expressly made in writing. Failure of a Party at any time, and for any length of time, to require performance by the other Party of any obligation under this Service Agreement shall in no event affect the right to require performance of that obligation or the right to claim remedies for breach under the Service Agreement or at law. No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this~~.~~ Service Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

~~20.~~28. **Counterparts**. This Service Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument. Delivery by a Party of an executed counterpart of a signature page of this Agreement by facsimile or electronic transmission (including PDF file) shall be effective as delivery of a manually executed counterpart hereof.

SIGNATURE PAGE FOLLOWS

~~Duke Energy Carolinas, LLC~~
~~Duke Energy Progress, LLC~~
~~Docket Nos. E-2, Sub 1170 and E-7, Sub 1169~~
~~ATTACHMENT B~~

DRAFT
SUBJECT TO DUKE LEGAL AND MANAGEMENT APPROVAL

~~Duke Energy Carolinas, LLC~~
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IN WITNESS WHEREOF, on the ~~day and year~~date set forth below, ~~the~~ Company ~~and~~, Customer and Renewable Supplier have caused this Service Agreement to be executed by their respective duly authorized representatives.

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

~~BY:~~
~~NAME:~~
~~TITLE:~~
~~DATE:~~

~~CUSTOMER~~

~~BY:~~
~~NAME:~~
~~TITLE:~~
~~DATE:~~

[DUKE ENERGY CAROLINAS, LLC] [DUKE ENERGY PROGRESS, LLC]	[RENEWABLE SUPPLIER]
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

[CUSTOMER]

~~Duke Energy Carolinas, LLC~~
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SUBJECT TO DUKE LEGAL AND MANAGEMENT APPROVAL

By: _____
Name: _____
Title: _____
Date: _____

~~Duke Energy Carolinas, LLC~~
~~Duke Energy Progress, LLC~~
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~~ATTACHMENT B~~

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Exhibit A

Form of Power Purchase Agreement

[Attach Exhibit A]

~~Duke Energy Carolinas, LLC~~
~~Duke Energy Progress, LLC~~
~~Docket Nos. E-2, Sub 1170 and E-7, Sub 1169~~
~~ATTACHMENT B~~

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Duke Energy Carolinas, LLC
Duke Energy Progress, LLC
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SUBJECT TO DUKE LEGAL AND MANAGEMENT APPROVAL

Exhibit B
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

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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 compiled 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.

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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:

[CRES 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:

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Duke Energy Progress, LLC
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Exhibit C
Form of Letter of Credit

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: _____

Date: _____

Beneficiary:
[Duke Energy Carolinas, LLC][Duke Energy Progress, LLC]
550 S. Tryon Street, DEC 40C
Charlotte, North Carolina 28202
Attn: Credit Risk Management Director

Ladies and Gentlemen:

By the order of:

Applicant:
_____
_____
_____
_____

We hereby issue in your favor our irrevocable 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 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.

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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 Applicant and the Beneficiary.

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

Very truly yours
[Issuing Bank]

Authorized Signer

Authorized Signer

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

ARTICLE I. ANNEX I

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]*

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ARTICLE II. 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:_____

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~~Exhibit D~~
~~Early Termination~~ Schedule of Product Charge
~~[Insert Schedule]~~

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.

DUKE ENERGY PROGRESS

DUKE ENERGY

POWER PURCHASE AGREEMENT

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

Overnight Mail: 400 South Tryon Street
Mail Code: ST 14Q
Charlotte, North Carolina 28202
Regular Mail: PO Box 1006
Mail Code: ST 14Q
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: 550 S. Tryon St.
Charlotte, North Carolina 28202
Regular Mail: P.O. Box 1321, DEC45
Charlotte, North Carolina 28201-1321
Attn.: VP Commercial Legal Support

Seller: _____
_____
_____
_____
_____

This Power Purchase Agreement, including Exhibits 1-10 hereto, which are incorporated into and made part hereof (collectively, the "Agreement"), is made and entered into by and between [insert full legal name of Seller] (the "Seller") and [Duke Energy Carolinas, LLC] [Duke Energy Progress, LLC] (the "Buyer") under the terms specified herein. Buyer and Seller may be referred to individually as a "Party" and collectively as the "Parties." Notwithstanding anything set forth herein, neither this Agreement nor any transaction contemplated hereunder will be effective **unless and until both Parties have executed** and delivered this Agreement, and the later of such date shall be the "Effective Date" of this Agreement.

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

1. Definitions

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

1.1. "AAA" is defined in Section 23.2.1.

1.2. "Abandon(s)" means the relinquishment of control or possession of the Facility and/or cessation of operations of or at the Facility by Seller. "Abandon" excludes cessation of generation to comply with Prudent Utility Practices, Permitted Excuse to Perform, or due to maintenance or repair of the Facility (including Maintenance Outages and Planned Outage), provided that such maintenance or repair activities are being performed in a Commercially Reasonable Manner and with Prudent Utility Practice.

1.3. "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.

1.4. "Agreement" is defined in the introductory paragraph hereof.

1.5. "Assignment" is defined in Section 24.1.

1.6. "Back-Up Tapes" is defined in Section 16.3.

1.7. "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).

1.8. "Billing Meter" is defined in Section 10.

1.9. "Billing Period" is defined in Section 11.

1.10. "Business Day" means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time.

1.11. "Buyer" shall have the meaning specified in the first paragraph of this Agreement

1.12. "Capacity" means and includes the electric generation capability and ability of the Facility and all associated characteristics and attributes, inclusive of the ability to contribute to peak system demands, as well as reserve requirements.

1.13. "Change of Control" means a transaction or series of related transactions (by way of merger, consolidation, sale of stock or assets, or otherwise) with any person, entity or "group" (within the meaning of Section 13(d)(3) of the U.S. Securities Exchange Act of 1934) of persons pursuant to which such person, entity, or group would 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 an internal reorganization where the ultimate parent of the Seller (as of the Effective Date) directly or indirectly retains 50% or more of the voting interests in Seller or substantially all of its assets and provided that Seller has provided Buyer no less than thirty (30) days prior written notice of such reorganization.

1.14. "Commercial Operation" means that the Facility is operational and placed into service such that all of the following have occurred and remain simultaneously true and accurate: (a) the Facility has been constructed, 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.

1.15. "Commercial Operation Date" means the date on which the Facility achieves or achieved Commercial Operation.

1.16. "Commercially Reasonable Manner" or "Commercially Reasonable" means, with respect to a given goal or requirement, the manner, efforts and resources a reasonable person in the position of the promisor would use, in the exercise of its reasonable business discretion and industry practice, so as to achieve that goal or requirement, which in no event shall be less than the level of efforts and resources standard in the industry for comparable companies with respect to comparable products. Factors used to determine whether a goal or requirement has been performed in a "Commercially Reasonable Manner" may include, but shall not be limited to, any specific factors or considerations identified in the Agreement as relevant to such goal or requirement.

1.17. "Commission" means the North Carolina Utilities Commission or any successor thereto.

1.18. "Contract Price" is defined in Section 4.4.

1.19. "Contract Quantity" is defined in Section 4.3.

1.20. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it

has hedged its obligations or entering into new arrangements which replace the terminated transaction(s), and all reasonable attorneys' fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination.

1.21. "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.

1.22. "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.

1.23. "Defaulting Party" is defined in Section 19.

1.24. "Default Liquidated Damages" shall be as specified in Section 20.5.1. The Default Liquidated damages shall be calculated by Buyer pursuant as follows: (i) For Facilities with Nameplate Capacity Rating up to 15 MW: the default Liquidated Damages shall be equal to 12.5% x the estimated capacity payments under this Agreement over the Term; (ii) for PPAs with Nameplate Capacity > 15 MW the default Liquidated Damages shall be equal to: for the first 15 MW (12.5% x estimated capacity payments under this Agreement over the Term) + $10,000 per MW for any nameplate capacity above 15 MW.

1.25. "Delivery Period" is defined in Section 4.1.

1.26. "Dispatch Down" is defined in Section 8.6.

1.27. "Dispatch Down Payment Event" is defined in Section 8.6.

1.28. "Disputes" is defined in Section 23.1.

1.29. "Early Termination Date" is defined in Section 20.1.

1.30. "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.

1.31. "Effective Date" is defined in the introductory paragraph hereto.

1.32. "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.

1.33. "Emergency Condition Instruction" means any System Operator Instruction relating to, due to, in response to, or to address an Emergency Condition.

1.34. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.

1.35. "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.

1.36. "Estimation Methodology" is defined in Section 8.9.3.

1.37. "Event of Default" is defined in Section 19.

1.38. "Expected Annual Output" means the quantity of Energy identified in Exhibit 5 for each calendar year during the Delivery Period of the Facility.

1.39. "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.

1.40. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.

1.41. "First COD Date" is defined in Section 20.5.

1.42. "Fitch" - means Fitch Ratings Ltd. or its successor.

1.43. "Force Majeure" is defined in Section 14.1.

1.44. "Force Majeure Instruction" means any System Operator Instruction relating to, due to, in response to, or to address a Force Majeure.

1.45. "GAAP" is defined in Section 9.1.

1.46. "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).

1.47. "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.

1.48. "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.

1.49. "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.

1.50. "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.

1.51. "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).

1.52. "Interconnection Instruction" means any order, action, signal, requirement, demand, and/or direction, howsoever provided or implemented by the System Operator due to, in response to, or to address any condition relating to any service and/or obligation occurring under the Interconnection Agreement.

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

1.54. "kW" means kilowatt.

1.55. "kWh" means kilowatt-hour.

1.56. "Letter(s) of Credit" means one or more irrevocable standby letters of credit 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.

1.57. "Lien" means any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, or encumbrance of any nature whatsoever.

1.58. "Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic loss or loss of economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).

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

1.60. "Milestone Deadline" means the deadline for Seller to achieve each Operational Milestone as set forth in Exhibit 3.

1.61. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.

1.62. "MW" means megawatt.

1.63. "MWh" means megawatt-hour.

1.64. "Nameplate Capacity Rating" means the maximum generating capability of the Facility as measured at the Delivery Point (AC) as set forth in Exhibit 4.

1.65. "NERC" means the North American Electric Reliability Corporation. For purposes of this Agreement, NERC includes any applicable regional entity with delegated authority from NERC, such as the SERC Reliability Corporation (SERC).

1.66. "Non-Defaulting Party" is defined in Section 20.

1.67. "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.

1.68. "Operational Milestone Schedule" means the schedule established in Exhibit 3 setting forth each Operational Milestone that Seller must fully complete by the Milestone Deadline.

1.69. "Party" or "Parties" is defined in the introductory paragraph hereto.

1.70. "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.

1.71. "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.

1.72. "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.

1.73. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.

1.74. "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.

1.75. "Product" means the Capacity of the Facility and the Energy generated by the Facility.

1.76. "Protected Information" is defined in Section 16.1

1.77. "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.

1.78. "PSC" means the Public Service Commission of South Carolina, or successor thereto.

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

1.80. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.

1.81. "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.

1.82. "Rating Agency" or "Rating Agencies" - means the rating entities of S&P, Moody's or Fitch.

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

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

1.85. "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) PURPA, (ii) those pertaining to the creation and delivery of the Product, (iii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.

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

1.87. "Security Period" is defined in Section 5.6.

1.88. "Seller" shall have the meaning specified in the first paragraph of this Agreement.

1.89. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency thereto.

1.90. "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.

1.91. "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.

1.92. "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.

1.93. "System Operator Instruction" means any order, action, requirement, demand, or direction, from the System Operator in accordance with Prudent Utility Practice, and delivered to Seller in a non-discriminatory manner, to operate, manage, and/or otherwise maintain safe and reliable operations of the System, including, without limitation those undertaken and implemented by the System Operator, in its sole discretion based on relevant System factors and considerations, including any and all operating characteristics, maintenance requirements, operational limitations, reliability (including, without limitation, standing NERC regulations or standards), safety, dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other System considerations, which may include, without limitation, an order or action to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the System, (ii) increase (based on generator characteristics and Prudent Utility Practices), reduce, or cease generation output to comply with standing NERC regulations or standards; (iii) respond to any transmission, distribution, or delivery limitations or interruptions; (iv) perform or cease performing any activity so as to operate in accordance with System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability generators to accommodate generation by the Facility; and, (v) suspend or interrupt any operational activity for an Emergency Condition or Force Majeure event; provided however, a System Operator instruction in response to an Emergency Condition, Force Majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory. For purposes of this Agreement, a System Operator Instruction shall not include any Interconnection Instruction.

1.94. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.

1.95. "Term" is defined in Section 3.1.

1.96. "Testing Period" is defined in Section 4.3.

1.97. "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.

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 [insert contract term of 2, 5, 10, 15 or 20 years for Contract price calculated using the Administratively Established Avoided Cost] [insert contract term from 1-20 years for Contract Price calculated using Hourly Marginal Avoided Costs*]* 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 twenty (20) Business Days after both Parties have executed this Agreement, Buyer will submit the Agreement for filing with the PSC. Seller agrees that Buyer will have sole discretion over all aspects of such submittal, including without limitation, the form and substance of the submittal, confidentiality, procedure, responding to any data requests, and providing any information to the PSC and the South Carolina Office of Regulatory Staff. Seller will not oppose or challenge the PSC's acceptance of this Agreement, and upon request by Buyer will promptly and fully support the PSC's acceptance of this Agreement without any modification, condition, suspension, or investigation. Buyer will make a good faith request that the PSC and the South Carolina Office of Regulatory Staff keep confidential the terms and conditions of this Agreement; *provided, however,* Seller agrees and acknowledges that information (including Protected Information) contained in this Agreement may become public by its submission to the PSC and the South Carolina Office of Regulatory Staff, and Seller hereby consents to any such disclosure, without any reservations and without any prior notice to Seller. If the PSC issues an order or any other directive to modify, condition, suspend, or investigate any aspect

of this Agreement prior to its acceptance, then this Agreement will immediately terminate, and upon any such termination neither Party shall have any obligation, duty, or liability to the other Party under this Agreement. In the event of such termination, each Party will retain its respective rights under PURPA. Buyer will provide notice to Seller after Buyer has received written notice of the PSC's determination in regards to Buyer's request that the PSC accept the Agreement for filing, and if such written notice from the PSC accepts this Agreement without any modification, condition, suspension, or investigation then Buyer will notify Seller that the condition precedent under this Section 3.3 has been satisfied.

4. **Purchase and Sale Obligations**

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

4.2. Contract Quantity. The "Contract Quantity" will be one hundred percent (100%) of the Capacity, output of Energy (including stored Energy), produced by the Facility, less that associated with Station Power.

4.2.1. Seller shall sell and deliver the Contract Quantity of the Product exclusively and solely to Buyer. Seller's failure to generate, sell, and deliver the Contract Quantity of the Product to Buyer will be excused with no damages payable to Buyer solely to the extent such failure is due to a Permitted Excuse to Perform.

4.2.2. Except as set forth in Section 8.6, Buyer shall have no obligation to receive, purchase, pay for, or pay any damages associated with not receiving the Product due to a Permitted Excuse to Perform. Buyer shall have full and exclusive rights to the Product (inclusive of all components), and will be entitled to full and exclusive use of the Product (inclusive of all components) for its purposes and in its sole and exclusive discretion.

4.2.3. The estimated monthly and annual Energy production of the Facility during the Delivery Period is set forth in Exhibit 1 hereto.

4.3. Testing Period. Prior to the Facility's Commercial Operation Date Seller may test the capability of the Facility to operate and generate the Product in accordance with this Agreement (such operational period, the "Testing Period"). Seller shall provide Buyer with written notice of a date certain on which Seller desires to initiate the Testing Period. After the Facility has achieved the Commercial Operation Date, the Buyer shall, expressly subject to the limitations set forth below, purchase the Product produced by the Facility during the Testing Period at the applicable Contract Price set forth in Exhibit 2, but expressly subject to the Buyer fully satisfying the following conditions: (i) the Testing Period shall not exceed sixty (60) days; and (ii) Seller shall certify in writing to Buyer, and to Buyer's satisfaction, together with supporting details, that each unit of the Product 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.

4.4. 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. 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 8.6, Buyer will have no obligation to pay for any Energy not delivered to the Delivery

Point.

4.6. Payment for Product. During the Term of this Agreement, Buyer agrees to pay Seller the product of (i) the Contract Price for the Product, as applicable, multiplied by (ii) the amount of Energy delivered by Seller to the Delivery Point during the Delivery Period.

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

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 [insert amount of Default Liquidated Damages specified in 20.5.1], as such Performance Assurance may be adjusted pursuant to Section 20.5.1.

5.2. [Post COD Performance Assurance not applicable for Agreements where an Hourly Marginal Avoided Cost Rate or a two (2) year Administratively Avoided Cost Rate have been elected as the contract price under Exhibit 2] Post-COD Performance Assurance. Subject to Section 5.3 below, after the Facility achieves Commercial Operation, Seller shall provide Buyer with Performance Assurance in the amount set forth in the below table corresponding to the applicable period during the Term of this Agreement. Seller may request and Buyer may, subject to Section 5.2, adjust the amount of such Performance Assurance within fifteen (15) Business Days of Seller's written request to coincide with the amount set forth in the below table. Seller's failure to provide the Performance Assurance and/or to maintain the Performance Assurance in the required amount and in full force and effect throughout the Term of this Agreement will be an Event of Default under this Agreement.

[*Insert* TABLE – Annual Performance Assurance.]

[For Agreements that include a fixed Contract Price for 5 years, the Post COD Performance Assurance shall equal the estimated year end overpayment balance for each calendar year of the Term calculated by Buyer in a Commercially Reasonable Manner as of the Effective Date, taking into account the Contract Price and shall be refreshed for each subsequent 5 year fixed price term]

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

6.1.2. 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 Requirements of Law applicable to Seller, the Facility, and/or Seller's obligations under the Agreement. Without limiting the generality of the foregoing Seller represents and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that: (a) Seller has obtained an approved and valid report of proposed construction or certificate of public convenience and necessity for the Facility from the [Commission][PSC]; (b) Seller has submitted to the Transmission Provider and the Transmission Provider has accepted the completed interconnection request for the Facility; and (c) Seller has obtained all applicable certifications and/or approvals for the Facility from FERC. Seller agrees and acknowledges that Buyer has entered into this Agreement in reliance upon the representations and warranties set forth in this section, and in the event of a breach or failure of or relating to any of the foregoing covenants and warranties, including without limitation for being false or misleading in any respect, then this Agreement will terminate upon Buyer providing Seller with 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. Within twenty (20) Business Days of a written request from Buyer, Seller agrees to provide Buyer with all information, documents, and affidavits from a duly authorized representative of Seller certifying that the Facility fully complies with PURPA, including without limitation, the PURPA Fuel Requirements.

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

7.1. Seller Requirements. Seller covenants (except to the extent expressly set forth in this Agreement) that: the Facility shall be designed, constructed, operated, controlled, maintained, and tested at Seller's sole cost and expense; the Facility shall be designed, constructed, operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, maintained, and tested by Seller to perform as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with the requirements of each applicable Requirements of Law and Prudent Utility Practice; and, that all contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the construction, ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, grading and building permits, and contracts and/or licenses to obtain 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 fully satisfy the PURPA Fuel Requirements during the Term of this Agreement. 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) [*insert amount equal to* 50% of Contract Price for Energy] 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 and Payments. Seller shall cooperate with Buyer to immediately and fully comply with all System Operator Instructions, and Seller hereby authorizes and grants to Buyer the right to control the Facility in any manner necessary to enable Buyer to take any actions required to implement or effectuate any System Operator Instruction. In order to implement the control rights authorized in this Section 8.6, Seller shall design and construct the Facility to provide Buyer with full control capabilities over the Facility, and Seller shall install and maintain the equipment set forth in Exhibit 4 so as to enable Buyer to have full control over the Facility to take any action based in any manner on or in response to an System Operator Instruction. If the System Operator requires the Facility to reduce or stop the generation of Energy pursuant to a System Operator Instruction (such reductions or cessations of Energy, the "Dispatch Down" of production by the Facility), Buyer shall pay Seller the amount set forth below if, and only if: (i) the Facility was operating at the time of the Dispatch Down instruction, and was required to and actually reduced Energy production pursuant to a Dispatch Down instruction; (ii) the actual reduction of Energy generation by the Facility due to Dispatch Down instructions exceeds [___5%___(___)] MWh (the "Dispatch Down Payment Threshold") in a calendar year (January – December); and, (iii) the Dispatch Down instruction was not due to an Emergency Condition or Force Majeure event (the foregoing items (i)-(iii), collectively, the "Dispatch Down Payment Event").

8.6.1. For each calendar year, after a Dispatch Down Payment Event occurs during that calendar year, Buyer shall pay Seller starting with the [_____ (___) MWh], at the Contract Price for the Product multiplied by the units of Product not generated due to the Dispatch Down instruction(s)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 6 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 6 on a real-time basis. In the event that the real time data specified in 8.6.2(i) is unavailable historical production data required under Section 9.4.5 shall be used in its place.

8.6.2. In the event Seller demonstrates that a Dispatch Down instruction issued by the System Operator does not fall within the definition of a System Operator Instruction and that the Facility actually reduced Energy production pursuant to such Dispatch Down instruction, Seller shall be entitled to a compensatory payment from Buyer, calculated using the Estimation Methodology, in the amount of the Contract Price for the Product not generated due to compliance with the Dispatch Down instruction (starting with the first MWh of Product not generated) as Seller's sole and exclusive payment and remedy for its compliance with such instruction.

8.7. Energy Storage. If the Facility is to be equipped with battery storage or other energy storage device (the "Storage Resource"), the Storage Resource shall be identified in Exhibit 4 attached to this Agreement, which shall be subject to Buyer's final approval. In all cases the Storage Resource must be charged solely by the Facility and the use of any Storage Resource shall be operated and equipped in accordance with the System Operator's Energy Storage Protocol, a copy of which is attached hereto as Exhibit 7, as may be modified from time to time by the System Operator (the "Energy Storage Protocol").

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 the 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 requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority.

9.4. 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. Subject to Seller authorizing Transmission Provider to provide Buyer with electronic access to the Billing Meter, Buyer shall read/obtain data from the Billing Meter at regular intervals, which shall be not less than twenty-seven (27) consecutive days and not more than thirty-three (33) consecutive days (each, a "Billing Period") 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) 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. Payment by Buyer shall be due by the later of thirty (30) days after the invoice date. 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 by paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising after the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Buyer shall indemnify, defend, and hold harmless Seller from any liability for such Taxes, including related audit and litigation expenses.

13.3. Remittances. In the event Seller is required by any Requirements of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may request reimbursement of such payment from Buyer by sending Buyer an invoice, and Buyer shall include such reimbursement in the next monthly invoice and Buyer shall remit payment thereof. Conversely, if Buyer is required by any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder; Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds or remittances associated with such Taxes shall be administered in accordance with Section 11.1.

13.4. Documentation. A Party, upon written request of the other Party, shall promptly provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from any Tax. Nothing herein shall obligate a Party to pay or be liable to pay any Taxes from which it is exempt pursuant to applicable law.

14. **Force Majeure**

14.1. Definition. "Force Majeure" means: (A) war, riots, floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, excessive winds, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (C) insurrection, rebellion, nationwide strikes; (D) an act of god or other such significant and material event or circumstance which prevents one Party from performing a material and significant obligations hereunder, which such event or circumstance was not anticipated as of the Effective Date, is not within the Commercially Reasonable control of, or the result of the 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; (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 three (3) 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. Notwithstanding anything to the contrary in this Agreement, Force Majeure will *not* be applicable to and will *not* be available as an excuse to Seller's performance of the obligations set forth in Sections 19.3 through and including 19.24. Notwithstanding anything to the contrary in this Agreement, Force Majeure will not be available as an excuse to any delays or failures in Seller timely achieving Commercial Operations by the Commercial Operations Date, delays or failures for which shall be governed exclusively by Section 20.5.

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 shall, without the other Party's prior written consent, disclose any term of this Agreement or any information relating to this Agreement, or any discussion or documents received from the other Party in connection with this Agreement (such information, the "Protected Information") to any third person (other than the Party's employees, affiliates, counsel, and 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 for the Term, 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. 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, a violation of any confidentiality obligations shall be an Event of Default hereunder, and 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. Notwithstanding anything to the contrary herein, 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.

16.3. Return of Confidential Information. Upon request of disclosing Party, receiving Party shall either (i) return the Protected Information, including all copies, or (ii) destroy the 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 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 Protected Information stored on Back-Up Tapes; provided, however, any Protected Information 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 Buyer 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 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 an "eligible commercial entity" within the Commodity Exchange Act;

17.1.10. It is 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. All Product will meet the specifications and requirements in this Agreement, including without limitation, compliance with PURPA;

18.1.2. Seller has provided and conveyed and will provide and convey to Buyer all Capacity rights associated with the Facility and all Energy produced by the Facility;

18.1.3. Seller holds all the rights to all the Product from the Facility, Seller has the right to

sell the Product to Buyer, and Seller agrees to convey and does convey to Buyer all rights and good title to the Product free and clear of any Liens, encumbrances, or title defects;

18.1.4. Seller has not and will not double sell, double claim or any manner otherwise double count the Product (including, without limitation, any Capacity of the Facility) in any manner (including, for example, by issuing a press release or otherwise claiming that Seller is creating any Capacity right in the facility or selling the Product to any person other than the Buyer); and

18.1.5. Seller has not and will not in any manner interfere with, encumber or otherwise impede Buyer's use, transfer, and sale of 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 Buyers 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 Buyers 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, 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.

19.13. Seller fails to fully comply with the PURPA Fuel Requirements.

19.14. Seller delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by the Facility.

19.15. Seller delivers or attempts to deliver any Product (or component thereof) to any entity or person other than to the Buyer.

19.16. Seller fails to promptly and fully comply with a System Operator Instruction.

19.17. Seller fails to provide, replenish, renew, or replace the Performance Assurance 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.

19.18. Seller fails to fully meet all the insurance requirements set forth in Section 7.5, and such failure is not cured within five (5) Business Days.

19.19. Seller fails to fully comply with all of the confidentiality obligations set forth in Section 16.

19.20. Seller 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 post Performance Assurance as required under this Agreement

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

19.22. A Party becomes Bankrupt;

19.23. 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. Seller violates the publicity obligations set forth in Section 26.10;

19.25. If the Facility is equipped with a Storage Resource: (i) Seller's failure to materially comply with the Energy Storage Protocol as required under this Agreement and such failure is not remedied within three Business Days after Seller's receipt of written notice from Buyer, or (ii) if Seller fails to materially comply with any Energy Storage Protocol on more than three (3) occasions over the Term of this Agreement; *provided however,* that any such failure shall not be counted against the cumulative limit if Seller can make a Commercially Reasonable demonstration to Buyer that Seller's failure to materially comply with the Energy Storage Protocol was beyond Seller's reasonable control and not the result of Seller's intentional misconduct or gross negligence; and

19.26. Except to the extent constituting a separate Event of Default (in which case the provisions applicable to that separate Event of Default shall apply) the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within

thirty (30) days after the Defaulting Party's receipt of written notice.

20. **Early Termination.**

20.1. Early Termination Date. 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").

20.2. 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.

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. Any calculation and payment of the Net Settlement Amount will be independent of and in addition to Seller's obligation to reimburse Buyer for overpayments pursuant to Section 20.6.

20.5. 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 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 [Insert Default Liquidated Damages to be determined *by Buyer in accordance with Section 1.24 _____ 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. Overpayment Reimbursement. Notwithstanding anything else in this Agreement to the contrary, including without limitation the Net Settlement Amount calculation and payment provisions set forth in Sections 20.1 through 20.5, and without limiting any of Buyer's other rights or remedies hereunder, Seller agrees and acknowledges that in the event this Agreement is terminated prior to the expiration of the Term for any reason other than an Event of Default by Buyer, that Seller will reimburse Buyer for all amounts paid by Buyer to Seller under this Agreement in excess of Buyer's avoided cost for energy and capacity over

the period starting from the Commercial Operation Date through the date of termination of this Agreement plus interest on such amount calculated at the rate of [UPDATED EVERY YEAR, CURRENTLY - DEP 2.9% (two and nine tenths percent)] [DEC 3.7% (three and seven tenths percent)] until repaid (the "Overpayment Amount"). Seller agrees to reimburse Buyer for the Overpayment Amount notwithstanding anything to the contrary in this Agreement and without regard to whether Seller is or may be liable to Buyer for any additional amounts under this Agreement, including, without limitation, any Net Settlement Amount, Gains, and/or Losses determined or to be determined pursuant to this Agreement. The Seller will pay Buyer the Overpayment Amount no later than three (3) Business Days after the Early Termination Date.

20.7. 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 sole Commercially Reasonable Discretion,

that Seller's proposed assignee has the technical, engineering, financial, and operational capabilities to perform under this Agreement, Buyer may not unreasonably withhold its consent; *provided, however*, that any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall deliver to Buyer Performance Assurance in the amount required under this Agreement, and such enforceability assurance as the Buyer may request in its sole 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.

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 or 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 within 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 1

Estimated Monthly Energy Production of the Facility

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

Exhibit 2

Contract Price

[Exhibit to be completed to include the applicable Contract price. Contract Price will be based on the Bill Credit election of the GSA Customer. The GSA Customer shall select one of the following options

Administratively Established Avoided Cost Bill Credit: A fixed levelized avoided energy and capacity rate calculated using the methodology approved pursuant to N.C. Gen. Stat. § 62-156(c) calculated over a period of 2 years (for terms of 2 years or more) or 5 years (for terms of 5 years or more). In the case of 10, 15, or 20 year terms, the Administratively Established Avoided Cost Bill Credit will be refreshed at either two-year or five-year intervals until the end of the contract term utilizing the then current methodology approved pursuant to N.C. Gen. Stat. § 62-156(c).

Hourly Marginal Avoided Cost Bill Credit: The Hourly Marginal Avoided Cost Rate in each hour in which energy is produced by the GSA Facility. The Hourly Marginal Avoided Cost Rate shall be calculated by DEP or DEC, respectively, based upon the methodology specified in the applicable GSA Tariff. The respective methodologies are reproduced below for ease of reference.

DEP

Hourly RTP Rate = MENERGY + CAP where:

MENERGY = Marginal Energy Cost per kilowatt-hour including marginal fuel and variable operating and maintenance expenses

CAP = Tiered Capacity Charge per kilowatt-hour applicable whenever the day-ahead forecast of the ratio of hourly available generation to hourly demand is equal or less than 1.15

The hourly RTP rate will not, under any circumstances, be lower than zero.

DEC

Hourly Rate = (Hourly Energy Charges + Rationing Charges).

Hourly Energy Charge = Expected marginal production cost, and other directly-related costs.

Rationing Charge = marginal capacity cost during hours with generation constraint.

The Hourly Rate will not, under any circumstance, be lower than zero.

Relevant Portion of the Delivery Period	Contract Price

Exhibit 3

Operational Milestone Schedule

Deadline	Performance / Result Seller Must Timely Achieve
	Interconnection Agreement Executed
	Financing Milestone Commitment
	Final System Design under Interconnection Agreement
	Required Permits and Approval Deadlines
	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. **Final System Design Under Interconnection Agreement.** Seller shall deliver to Buyer a copy of the design specifications delivered by Seller to the Transmission Provider as of Seller's execution of the facility study agreement with the Transmission Provider, which design specifications shall be deemed as the "final" system design for purposes of Seller's obligation to timely achieve the Commercial Operation Date set forth above in this Exhibit 3. The final design specification documents delivered by Seller shall be labeled as "***FINAL***", and shall be sealed with a [North Carolina/South Carolina] Professional Engineer for purposes of establishing the final design submitted by the Seller based on which the Transmission Provider will determine impacts to the System and construct interconnection facilities for Seller to interconnect with the System and perform under this Agreement. Seller understands that changes in system design may be deemed as material or significant design changes by the Transmission Provider, and could result in the Transmission Provider withdrawing Seller's position in the transmission queue or otherwise withdrawing Seller's transmission request, as may be determined by the Transmission Provider.

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 3shall 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.

Exhibit 4

Facility Information

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:

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. Subject to final approval by Buyer as of the date of final execution of the Interconnection Agreement, the following Storage resources shall be connected to or incorporated into the Facility [identify the design and all material components of any battery storage or other energy storage device connected to or incorporated into the Facility]

   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

[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:

Exhibit 7
Form of Letter of Credit

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: _____

Date: _____

Beneficiary:
[Duke Energy Carolinas, LLC][Duke Energy Progress, LLC]
550 S. Tryon Street, DEC 40C
Charlotte, North Carolina 28202
Attn: Chief Risk Officer

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/m²	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/m²	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/m²	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/m²	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.	± 25 W/m²	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

For Facilities equipped with DC tied, behind a solar inverter, Storage Resources the following Power Plant Controller Output Points shall also be reported to Buyer[1]

Analog	**Units of Measure**	**Accuracy**	**Notes**
Unit Net MW			The resource's real power output measured at the low side of the step-up transformer.
Unit Gross MW			The resource's real power output before subtracting the auxiliary real power load or step-up transformer real power losses.
Unit Auxiliary MW			The resource's real power load the generating unit provides to maintain its station service power.
Storage Device Active Power Operating (Discharging) High Limit	+MWs		Storage Device's Active Power Operating High Limit given current equipment status, equipment characteristics, and current ambient conditions.
Storage Device Active Power Operating (Charging) Low Limit	-MWs		Storage Device's Active Power Operating Low Limit given current equipment status, equipment characteristics, and current ambient conditions.

[1] For non-DC tied, behind a solar inverter, Storage Resources Buyer may require additional Power Plant Controller Output Points to be reported upon reasonable notice to Seller.

Number of Storage Device DC-DC Converters in Ready Status			Sum of the Number of DC-DC Converters currently in service. Can be a decimal if one or more DC-DC Converters are partially available.
Allowable Depth of Discharge	MWh		MWh energy storage potential, considering OEM recommendations and any emergent operating limitations, at a given point in time.
State of Charge			Percentage of the Allowable Depth of Discharge currently charged within the storage device. Example: A nameplate rated 10 MWh storage device is currently allowed to store energy up to 80% of its nameplate rating and down to 20% of its nameplate rating. The storage device currently has 4 MWhs stored in the device. The Allowable Depth of Discharge is 10 MWh *80% - 10 MWH * 20% = 6 MWh The State of Charge = 4 MWh / 6 MWh = 66.66%
Max MWh Charge			Maximum amount of energy currently allowed to be stored in the energy device given current equipment status, equipment characteristics, and current ambient conditions.
Min MWh Charge			Minimum amount of energy currently allowed to be stored in the energy device given current equipment status, equipment characteristics, and current ambient conditions.
Bulk Discharge Window Start Timestamp			The Timestamp of the start of the next Bulk Discharge Window.
Bulk Discharge Window End Timestamp			The Timestamp of the end of the next Bulk Discharge Window.
Bulk Discharge Window Active Power Setpoint			Active Power Setpoint for the current or next Bulk Discharge window taking into account the storage device's current State of Charge and Allowable Depth of Discharge.
Digital	**Status**	**Accuracy**	**Notes**
Storage Device Breaker Status	OPEN/CLOSED		Indicates whether a the Unit Generator Breaker is Open or Closed.

Exhibit 10
Energy Storage Protocol

1. The Storage Resource must be on the DC side of the inverter and charged exclusively by the Facility.

2. The Storage Resource will be controlled by the Seller, within operational limitations described below.

3. The maximum output of the Facility, including any storage capability, at any given time shall be limited to the Facility's maximum Nameplate Capacity Rating (AC) as specified in the Agreement.

4. The Seller may not increase the Facility's Capacity, including any DC Nameplate Capacity Rating (MW) or AC Nameplate Capacity Rating (MW) or Storage Resource capacity (MW/MWh) beyond what is specified in the Agreement.

5. The discharge of stored energy is not permitted while the Facility has received or is subject to a Dispatch Down instruction or control signal from the System Operator.

6. Ramp rates for Storage Resource shall not exceed 5 percent of the Facility's Nameplate Capacity Rating on a per minute basis, whether up or down, at any time that the Facility is not generating.
7. When the Facility is generating, the Storage Resource shall not act to increase the net ramp rate of the Facility by more than 1 percent of the Facility's Nameplate Capacity Rating per minute in relation to the output from the Facility alone, over a one minute interval, up or down.
8. Scheduling and other storage limitations:
    a. Seller shall, by 8am each day, provide a day-ahead forecast of planned initial state of energy storage (MWh) and planned charging (MWh) of storage for each hour.
    b. By 4pm each day, Buyer will make commercially reasonable efforts to provide Seller with a window for bulk discharge with start and end times for the following day, including off-peak days.
        i. Outside of the bulk discharge window, discharge of the Storage Resource will not be permitted until the Storage Resource reaches and remains at a state of charge of at least 70% of the Allowable Depth of Discharge (as defined below).
        ii. During on-peak days, the bulk discharge window will be entirely contained within the respective on-peak hours.
        iii. Buyer will make commercially reasonable efforts to provide a minimum of 3 hours to discharge remaining battery capacity within each on-peak period.
        iv. The discharge rate (in MW) shall be levelized across the bulk discharge window except as limited by ramp rate criteria or inverter capability.
        v. For non-summer periods, if the bulk discharge window is not long enough to empty the battery before solar generation is expected to be at full output, the bulk discharge window may be moved up to allow full storage discharge within the on-peak window.
    c. The storage charging (Active Power) when the Storage Resource is not inverter limited, shall be limited to 30% of a Facility's storage Allowable Depth of Discharge (e.g., a 10MWh

battery with an Allowable Depth of Discharge of 8MWh could charge Active Power at a maximum of 2.4MW).

9. Buyer reserves the right to add or modify operating restrictions specified in these Energy Storage Protocols to the extent necessary to comply with NERC Standards as such standards may be modified from time to time during the Term. Any such modification shall be implemented by Buyer in a Commercially Reasonable Manner and shall be applied to the Facility and Buyer's own generating assets on a non-discriminatory basis. If Seller can make a Commercially Reasonable Demonstration to Buyer, which is approved by Buyer in its reasonable discretion, that the Facility does not contribute to potential NERC compliance violations for which the modifications have been implemented, then such modifications shall not apply to the Facility.

10. Seller will only be compensated for Energy and Capacity actually provided to Buyer in accordance with the terms of the Agreement.

Notes:

a) For facilities equipped with energy storage devices, Seller shall be required to provide the "Nameplate Capacity Ratings" for the Facility in both AC and DC and include in Exhibit 4.

b) The storage device capacity (MW and MWh) shall be specified in Exhibit 4.

Definitions:

"Allowable Depth of Discharge" shall mean the MWh energy storage potential, considering the original equipment manufacturer's recommendations and any emergent operating limitations, at a given point in time.

Other capitalized terms used in this Exhibit which have not been defined herein shall have the meaning ascribed to such terms in the Agreement to which this exhibit is attached.