

# **POWER PURCHASE AGREEMENT**

**between**

**City of Columbus Department of Public Utilities**

**as Buyer**

**and**

**DG Columbus Jackson Pike, LLC**

**as Seller**

**dated as of**

**December 31, 2021**

## TABLE OF CONTENTS

<b>TABLE OF CONTENTS</b> .....	i
<b>POWER PURCHASE AGREEMENT</b> .....	1
<b><u>WITNESSETH:</u></b> .....	1
<b>ARTICLE 1 DEFINITIONS AND INTERPRETATION</b> .....	1
1.1 Definitions. ....	1
1.2 Interpretation. ....	12
<b>ARTICLE 2 TERM; PURCHASE OPTION</b> .....	13
2.1 Term. ....	13
2.2 Purchase Option. ....	14
<b>ARTICLE 3 OBLIGATIONS AND DELIVERIES</b> .....	15
3.1 Product. ....	15
3.2 Sale and Purchase Obligations. ....	15
3.3 Test Energy; Contract Price. ....	15
3.4 Project Capacity; Site Layout. ....	15
3.5 Taxes. ....	16
3.6 Offsets, Allowances, Environmental Attributes. ....	16
3.7 Buyer Excuses. ....	17
3.8 Transmission; Distribution. ....	17
3.9 PJM Jurisdiction. ....	18
3.10 Guaranteed Energy Production. ....	18
3.11 Buyer Curtailment. ....	19
3.12 Outage Notification. ....	19
3.13 [Reserved.] ....	20
3.14 Casualty. ....	20
3.15 Change of Law. ....	20
3.16 [Reserved.] ....	21
3.17 Project Upgrades. ....	21
3.18 Coordination with Buyer’s Load-Serving Entity .....	21
<b>ARTICLE 4 PROJECT DESIGN AND CONSTRUCTION</b> .....	21
4.1 Project Development. ....	21
4.2 Interconnection Readiness; Interconnection Costs .....	22
4.3 Commercial Operation Date. ....	22
4.4 COD Conditions. ....	23
<b>ARTICLE 5 METERING AND MEASUREMENT</b> .....	23
5.1 Metering System. ....	24
<b>ARTICLE 6 EARLY TERMINATION</b> .....	24
6.1 Early Termination. ....	25
<b>ARTICLE 7 EVENTS OF DEFAULT</b> .....	25
7.1 Events of Default. ....	25
7.2 Remedies; Declaration of Early Termination Date. ....	26
7.3 Termination Payment. ....	26
7.4 Notice of Payment of Termination Payment. ....	27
7.5 Disputes with Respect to Termination Payment. ....	27
7.6 Mitigation. ....	27

ARTICLE 8 PAYMENT .....	28
8.1    Billing and Payment. ....	28
8.2    Disputes and Adjustments of Invoices. ....	28
8.3    Netting of Payments. ....	28
ARTICLE 9 INSURANCE.....	29
9.1    Insurance. ....	29
ARTICLE 10 REPRESENTATIONS, WARRANTIES AND COVENANTS .....	29
10.1    Representations and Warranties. ....	29
10.2    General Covenants. ....	30
10.3    Seller Covenants.....	31
10.4    Buyer’s Additional Representations, Warranties, and Covenants. ....	31
ARTICLE 11 TITLE, RISK OF LOSS, INDEMNITIES .....	32
11.1    Title and Risk of Loss. ....	32
11.2    Indemnities by Seller.....	32
11.3    Notice of Claims.....	33
11.4    Defense of Action.....	33
11.5    Buyer Acknowledgement.....	33
ARTICLE 12 CONFIDENTIAL INFORMATION .....	34
12.1    Confidential Information.....	34
ARTICLE 13 ASSIGNMENT .....	37
13.1    Successors and Assigns; Assignment.....	37
13.2    Collateral Assignment. ....	38
ARTICLE 14 FORCE MAJEURE .....	39
14.1    Force Majeure Events.....	39
ARTICLE 15 LIMITATIONS ON LIABILITY .....	41
15.1    Disclaimer of Warranties.....	41
15.2    Limitations on Liability.....	41
ARTICLE 16 DISPUTE RESOLUTION .....	42
16.1    Intent of the Parties.....	42
16.2    Management Negotiations.....	42
16.3    Specific Performance and Injunctive Relief.....	43
ARTICLE 17 NOTICES .....	43
17.1    Notices.....	43
ARTICLE 18 MISCELLANEOUS .....	44
18.1    Survival. ....	44
18.2    Audits. ....	44
18.3    Amendments.....	45
18.4    Waivers.....	45
18.5    Severability.....	45
18.6    Standard of Review. ....	45
18.7    Governing Law.....	45
18.8    Venue.....	45
18.9    Waiver of Jury Trial. ....	46
18.10    Attorneys’ Fees.....	46
18.11    No Third-Party Beneficiaries. ....	46
18.12    No Agency.....	46
18.13    Cooperation. ....	47

18.14	Further Assurances. ....	47
18.15	Captions; Construction. ....	47
18.16	Entire Agreement. ....	47
18.17	No Public Utility. ....	47
18.18	Subcontractors. ....	47
18.19	Counterparts. ....	48

Exhibit A	Contract Price
Exhibit B	Description of Project and Site
Exhibit C	Description of Delivery Point(s) and Three-Line Diagram
Exhibit D	Guaranteed Energy Production
Exhibit E	Purchase Option - Purchase Price Schedule
Exhibit F	Buyer and Seller Insurance Requirements
Exhibit G	City of Columbus Existing and Late-Stage Renewable Projects
Exhibit H	Monthly Progress Report

## POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this “*Agreement*”) is effective as of December 31, 2021 (the “*Effective Date*”) by and between City of Columbus, Department of Public Utilities, an Ohio municipal utility, (“*Buyer*”) and DG Columbus Jackson Pike, LLC, a Delaware limited liability company (“*Seller*”). Buyer and Seller are each individually referred to herein as a “*Party*” and collectively as the “*Parties*”.

### WITNESSETH:

WHEREAS, Seller intends to develop a photovoltaic solar energy generation facility of approximately 18 MW<sub>AC</sub> aggregate nameplate capacity on a site located at 2104 Jackson Pike, Columbus, OH (“*Project*”)(hereinafter defined);

WHEREAS, Seller desires to sell, and Buyer desires to purchase and receive the Product (as defined herein), on the terms and conditions set forth herein;

WHEREAS, Buyer seeks for the Project to be used as a source of renewable energy supply for Buyer to utilize to serve its retail customers and to serve to offset certain demand-based charges incurred by the Buyer;

WHEREAS, the Parties acknowledge that Buyer receives wholesale power supply from a third-party who serves as Buyer’s Load-Serving Entity under PJM rules and, as such, Seller is willing to coordinate with Buyer’s Load-Serving Entity to enable Buyer to utilize the Project as a source of supply for its retail customers;

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

### ARTICLE 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions.

“*AC*” means alternating current.

“*Act*” has the meaning set forth in Section 12.1(c)(vi).

“*AD/CVD*” refers to antidumping and countervailing duties.

“*AD/CVD Matter*” means the occurrence prior to the Commercial Operation Date of any of the following: (a) Any anti-circumvention petition other than the A-SMACC Petition is filed alleging that manufacturers or importers are circumventing any antidumping or countervailing duty orders on solar PV cells, modules, or their components, and the U.S. Department of Commerce (“*DOC*”) has not issued a decision that it will not initiate an anti-circumvention inquiry in response to such petition; (b) *DOC* initiates any anti-circumvention inquiry (whether in response to the A-SMACC

Petition or other anti-circumvention petition, or self-initiated by the DOC) into whether manufacturers or importers are circumventing any antidumping or countervailing duty orders on solar PV cells, modules, or their components, and DOC has not issued a final and non-appealable determination of no circumvention with respect to all such claims in the inquiry; or (c) Any new or increased tariff or AD/CVD (compared to what is in effect as of the Effective Date) is promulgated to be imposed on solar PV cells, modules, or their components, or a rulemaking or other proceeding is initiated to consider promulgation of any such new or increased tariff or AD/CVD and the outcome of such proceeding remains pending.

**“Affiliate”** means, with respect to any Person, any entity controlled, directly or indirectly, by such Person, any entity that controls, directly or indirectly, such Person or any entity directly or indirectly under common control with such Person. For the purposes of this definition, (a) “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management, operations, or policies of such Person, whether through the ownership of voting securities or by contract or otherwise; (b) NextEra Operating Partners, LP, NextEra Energy Partners, LP, and their respective subsidiaries, are deemed to be Affiliates of Seller; and (c) in no event shall the directors, officers, shareholders, partners, members, agents and employees, subcontractors or suppliers of a Party be considered Affiliates of such Party.

**“After-Tax Basis”** means, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (the “Base Payment”) supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment plus the Additional Payment will, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations will be made on the assumption that the recipient is subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, is subject to state and local income taxation at the highest applicable statutory rates applicable to corporations doing business in the State of Ohio and will take into account the deductibility (for federal income tax purposes) of state and local income taxes.

**“Agents”** means, with respect to a Party, its officers, directors, members, managers, employees, agents, contractors, and consultants.

**“Agreement”** has the meaning set forth in the first paragraph of this Agreement.

**“Anticipated Commercial Operation Date”** means December 31, 2022.

**“Applicable Law”** means, with respect to any Person, any law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, holding, injunction, registration, license, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, including the Forced Labor Act and CBP Order.

**“A-SMACC Petition”** means that that certain petition filed by the American Solar Manufacturers Against Chinese Circumvention on August 16, 2021 with the U.S. Department of Commerce seeking an investigation into whether certain Chinese silicon solar manufacturers circumvented antidumping duty and countervailing duty orders on PV solar cells by importing into the United States from manufacturing facilities in Malaysia, Thailand and Vietnam.

**“Back-Up Metering”** has the meaning set forth in Section 5.1(b).

**“Bankrupt”** means, with respect to a Party, such Party (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (b) makes an assignment or any general arrangement for the benefit of creditors (other than any assignment contemplated in ARTICLE 13), (c) otherwise becomes bankrupt, (d) is generally unable to pay its debts as they fall due, (e) has been adjudicated bankruptcy or has filed a petition or an answer seeking an arrangement with creditors, (f) has taken advantage of any insolvency law or has submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding, (g) becomes subject to an order, judgment or decree for relief, entered in an involuntary case, without the application, approval or consent of such Party by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred eighty (180) consecutive days, (h) has failed to remove an involuntary petition in bankruptcy filed against it within one hundred eighty (180) days of the filing thereof, or (i) becomes subject to an order for relief under the provisions of the United States Bankruptcy Act, 11 U.S.C. § 301.

**“Business Day”** means any day other than Saturday, Sunday, or any other day on which banking institutions in New York, New York are required or authorized by Applicable Law to be closed for business.

**“Buyer”** has the meaning set forth in the first paragraph of this Agreement.

**“Buyer Curtailment”** has the meaning set forth in Section 3.11.

**“Buyer Excuses”** has the meaning set forth in Section 3.7.

**“Buyer’s Electrical System”** means all of that equipment from the Delivery Point(s) and through the Buyer’s distribution and transmission systems, to the extent of any.

**“Buyer’s Exercise Notice”** has the meaning set forth in Section 2.2.

**“Buyer’s Interconnection Facilities”** means the wires, equipment, or facilities owned or controlled by Buyer and located between the Delivery Point(s) and Buyer’s Electrical System, as further defined in the Interconnection Agreement.

**“CBP Order”** means the Withhold Release Order issued by the U.S. Customs and Border Protection on June 24, 2021 with respect to silica-based products made by Hoshine Silicon Industry Co. Ltd. and its subsidiaries.

**“Change of Law”** means any enactment, adoption, promulgation, modification (including a written change in interpretation by a Governmental Authority), repeal of any Applicable Law, or the imposition of any material conditions on the issuance or renewal of any applicable Governmental Approval (notwithstanding the general requirements contained in any Governmental Approval at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), in all cases, occurring after the Effective Date.

**“Claim Notice”** has the meaning set forth in Section 11.3.

**“COD Conditions”** means the conditions to achievement of Commercial Operation set forth in Section 4.4.

**“Commercial Operation”** means the Project has achieved the COD Conditions, is operating, and able to produce and deliver Delivered Energy to Buyer pursuant to the terms of this Agreement.

**“Commercial Operation Date”** means the date on which the Project is ready for Commercial Operation, as Notified by Seller to Buyer in accordance with Section 4.4.

**“Commercially Reasonable Efforts”** means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Prudent Operating Practices, including electric system reliability and stability, state or other regulatory mandates relating to renewable energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. “Commercially Reasonable Efforts” will be reviewed and determined based upon the facts and circumstances known at the time that a sale, purchase, or other action is taken and will not be based upon a retroactive review of what would have been optimal at such time.

**“Compensable Deemed Delivered Energy”** means the Energy that the Project would have generated and delivered to the Delivery Point(s), but did not generate or deliver to the Delivery Point(s) due to (a) a Buyer Curtailment, except to the extent such curtailment is necessary as a result of a Buyer Excuse, or (b) a Deemed Buyer Curtailment.

**“Confidential Information”** has the meaning set forth in Section 12.1.

**“Consented Designation”** has the meaning set forth in Section 3.9.

**“Contract Price”** means, for a given Contract Year, the U.S. Dollar price per MWh (\$/MWh) set forth in Exhibit A for such Contract Year.



**“Contract Year”** means a calendar year commencing on January 1 of the year following the Commercial Operation Date of the Project; provided, that the first Contract Year shall include the period of time, if any, between the Commercial Operation Date of the System and January 1 of the year following the Commercial Operation Date of the System.

**“Costs”** means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction 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 a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with such Terminated Transaction.

**“COVID-19”** means the viral pneumonia named coronavirus disease 2019 (COVID-19) by the World Health Organization and caused by the virus named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) by the International Committee on Taxonomy of Viruses and any mutations thereof.

**“COVID-19 Delay”** means (a) a delay in the manufacture, shipment, or delivery to the Site of equipment or materials ordered for the Project or the Buyer’s Interconnection Facilities, as applicable, (b) the inability of Seller or Buyer, as applicable, to place a new order for equipment or materials required for the Project or Buyer’s Interconnection Facilities, as applicable, or to purchase sufficient equipment or materials meeting the applicable specifications for use in the Project or Buyer’s Interconnection Facilities, as applicable, or (c) the inability of Seller or Buyer, or Seller’s or Buyer’s respective subcontractors, as applicable, to retain or employ sufficient labor to construct the Project or Buyer’s Interconnection Facilities, as applicable, in accordance with this Agreement or the Interconnection Agreement, as applicable, in each case, that is unanticipated as of the Effective Date and directly caused by a COVID-19 Event.

**“COVID-19 Event”** means any government-imposed quarantines, travel restrictions, , factory shutdowns or slowdowns, workplace or worksite shutdowns or slowdowns, directly related to or directly resulting from COVID-19 but only to the extent the Party asserting a COVID-19 Event has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome.

**“Critical Electric Info”** has the meaning set forth in Section 12.1(h).

**“Daily Delay LD”** means One Thousand Eight Hundred Dollars (\$1,800).

**“Daily Delay LD Cap”** means Three Hundred and Twenty Four Thousand Dollars (\$324,000).

**“Day” or “day”** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Eastern Prevailing Time on any calendar day and ending at 24:00 hours Eastern Prevailing Time on the same calendar day.

**“Deemed Buyer Curtailment”** means (a) any failure or inability by Buyer to receive Energy at the

Delivery Point(s) other than due to a Buyer Excuse; (b) any breach by Buyer of this Agreement or the Interconnection Agreement, which such breach interrupts, prevents, interferes with, or otherwise reduces Seller's ability to deliver Energy to the Delivery Point(s); (c) any System Curtailment caused by conditions or activities of Persons that, in either case, are under Buyer's control; (d) any circumstances under which Seller is unable to operate the Project as a result of Buyer's or Seller's need to pursue and obtain any interconnection agreement, other than the Interconnection Agreement, or other transmission rights under PJM or the PJM Tariff; (e) any circumstances under which delivery of Energy from the Project is curtailed by Buyer's Load-Serving Entity; (f) failure or inability by Buyer to receive Energy at the Delivery Point(s) after the Commercial Operation Date due to failure of Buyer's Electrical System; or (g) any System Curtailment or failure or inability by Buyer to receive Energy at the Delivery Point(s) due to any Consented Designation or due to Buyer seeking an alternative designation or designation as a "Market Participant" or seeking the designation of the Project as a "Network Resource" or an alternate designation under the PJM Tariff other than non-retail behind the meter generation.

**"Defaulting Party"** has the meaning set forth in Section 7.1(a).

**"Delivered Energy"** means, at any time, one hundred percent (100%) of the Energy, including Test Energy, delivered to the Delivery Point(s), excluding electric energy used in the operation of the Project.

**"Delivery Point(s)"** means the point(s), more specifically described in Exhibit C, where Seller's Interconnection Facilities connect to the Buyer's Interconnection Facilities.

**"Disclosing Party"** has the meaning set forth in Section 12.1.

**"Dispute"** has the meaning set forth in Section 16.1.

**"Early Termination Date"** has the meaning set forth in Section 7.2(a).

**"Effective Date"** has the meaning set forth in the introductory paragraph to this Agreement.

**"Electric Metering Device(s)"** means the metering and data processing equipment used to measure, record, or transmit data relating to the Energy and to determine the amount of Delivered Energy.

**"Emergency Condition"** means a condition or situation that, pursuant to Prudent Operating Practices, (a) is imminently likely to endanger, or is contributing to the endangerment of, life, property, or public health and safety, or (b) is imminently likely to cause, or is causing, a material adverse effect on the security of, or damage to the Project, the Site, the Buyer's Interconnection Facilities, the Seller's Interconnection Facilities, or the Buyer's Electrical System.

**"Energy"** means three (3)-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours (kWh) or megawatt-hours (MWh), generated by the Project and available for delivery to the Delivery Point(s), excluding electric energy used in the operation of the Project.

***“Energy Production Damages”*** has the meaning set forth in Exhibit D.

***“Environmental Attributes”*** means all attributes (excluding Tax Attributes) of an environmental nature that are created or otherwise arise from the Project’s generation of Energy from solar energy in contrast to the generation of electricity using fossil fuels, including tags, certificates or similar products or rights associated with solar energy production, in all cases, pursuant to applicable federal, state and local law, as of the Effective Date.

***“Event of Default”*** has the meaning set forth in Section 7.1.

***“Executives”*** has the meaning set forth in Section 16.2(a).

***“Exempted Materials”*** has the meaning set forth in Section 12.1(f).

***“Fair Market Value”*** means the price that would be paid as of the date on which Seller receives Buyer’s Exercise Notice in an arm’s length, free market transaction, in cash, between an informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Project and advances in solar technology and the commercial benefits that Seller may be able to derive from the Project, *provided* that installed equipment will be valued on an installed basis and costs of removal from a current location will not be a deduction from the valuation.

***“Force Majeure Event”*** has the meaning set forth in Section 14.1.

***“Forced Labor”*** means any form of convict, indentured, or forced labor, including forced or indentured or other illegal child labor, as further described in the Forced Labor Act.

***“Forced Labor Act”*** means Section 307 of the Tariff Act (19 U.S.C. § 1307).

***“Forced Outage”*** means a complete removal of the Project from service, which such removal Seller reasonably expects to exceed twenty-four (24) hours in duration and is taken by Seller in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction, or any other unavailability of the Project for maintenance or repair that is not a Planned Outage, due to a Buyer Curtailment, a Deemed Buyer Curtailment, a System Curtailment, or the result of a Force Majeure Event.

***“Future Environmental Attributes”*** has the meaning set forth in Section 3.6.

***“GAAP”*** means generally accepted accounting principles in the United States of America applied on a consistent basis.

***“Gains”*** means with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties,

including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs.

**“Governmental Approval”** means an authorization, consent, approval, waiver, exception, variances, permits, license, or exemption of a Governmental Authority.

**“Governmental Authority”** means, subject to the last sentence of this definition, any federal, state, local or municipal government body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; any court or governmental tribunal; or any independent operator, regional transmission organization or other regulatory body; in each case having jurisdiction over either Party, the Project, the Site, Seller’s Interconnection Facilities, the Buyer’s Interconnection Facilities, or the Buyer’s Electrical System.

**“Guaranteed Commercial Operation Date”** means December 31, 2023, as such date may be extended for any Permitted Extensions in accordance with Section 4.3.

**“Guaranteed Energy Production”** has the meaning set forth in Exhibit D.

**“Indemnified Party”** has the meaning set forth in Section 11.3.

**“Indemnifying Party”** has the meaning set forth in Section 11.3. In no event shall Buyer be the Indemnifying Party.

**“Initial Negotiation End Date”** has the meaning set forth in Section 16.2(a).

**“Initial Term”** has the meaning set forth in Section 2.1.

**“Interconnection Agreement”** means the separate generation interconnection agreement(s) between Seller and Buyer for interconnection of the Project to the Buyer’s Interconnection Facilities, as such agreement(s) may be amended from time to time.

**“Interconnection Extensions”** has the meaning set forth in Section 4.2(b).

**“Interconnection Readiness”** means that Buyer’s Interconnection Facilities are mechanically complete and capable of delivering Delivered Energy from the Delivery Point(s) to Buyer’s Electrical System in accordance with the Interconnection Agreement, as Notified by Buyer to Seller.

**“Interconnection Readiness Deadline”** means November 15, 2022, as such date may be extended in accordance with Section 4.2(b).

**“Interest Rate”** means the lower of (a) annual rate equal to the Prime Rate then in effect plus two percent (2%) and (b) the maximum interest permitted by Applicable Law.

**“kW”** means a kilowatt (or 1,000 watts) of AC electric generating capacity.

**“kWh”** means a kilowatt hour of Energy.

**“Lease Agreement”** means the separate lease agreement(s) between Seller and Buyer for leasing of the Site, as such agreement(s) may be amended from time to time.

**“Load-Serving Entity”** shall have the meaning specified in the PJM Agreements.

**“Losses”** means with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner. Where Seller is the Non-Defaulting Party, “Losses” includes any loss or recapture of Tax Attributes grossed-up and paid on an After-Tax Basis, and where Buyer is the Non-Defaulting Party, “Losses” includes any loss of Environmental Attributes, grossed-up and paid on an After-Tax Basis. Factors used in determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining term of this Agreement (as though no Terminated Transaction had occurred).

**“Manager”** has the meaning set forth in Section 16.2(a).

**“Maximum Financial Obligation”** has the meaning set forth in Section 10.4.

**“MW”** means a megawatt (or 1,000 kilowatts) of AC electric generating capacity.

**“MWh”** means a megawatt hour of Energy.

**“Net Book Value”** has the meaning set forth in Section 2.2.

**“Non-Appropriation”** has the meaning set forth in Section 10.4.

**“Non-Defaulting Party”** has the meaning set forth in Section 7.2.

**“Non-Fault Termination Payment”** has the meaning set forth in Section 6.1.

**“Notice”** and **“Notify”** have the meaning set forth in Section 17.1.

**“Option Price”** has the meaning set forth in Section 2.2.

**“Other Project Agreements”** means the Interconnection Agreement and the Lease Agreement.

***“Outside Interconnection Readiness Deadline”*** means November 15, 2023.

***“Party”*** or ***“Parties”*** has the meaning set forth in the introductory paragraph of this Agreement.

***“Permitted Extension”*** has the meaning set forth in Section 4.3.

***“Person”*** means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental entity, limited liability company or any other entity of whatever nature.

***“PILOT Payments”*** means payments in lieu of tax that may be imposed on the Project.

***“PJM”*** means the PJM Interconnection, L.L.C., the regional transmission organization, and any successor organization.

***“PJM Agreements”*** means the PJM Operating Agreement, the PJM Tariff, the PJM Reliability Assurance Agreement, and the PJM Manuals, as the foregoing may be amended, supplemented or otherwise modified from time to time.

***“PJM Manual”*** means the written instructions, rules, procedures and guidelines established by PJM for the operation, planning, and accounting requirements of the PJM region and the PJM interchange energy market.

***“PJM Operating Agreement”*** means the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., as such may be amended from time to time.

***“PJM Reliability Assurance Agreement”*** means the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region, as such may be amended from time to time.

***“PJM Tariff”*** means the PJM Open Access Transmission Tariff, as such may be amended from time to time.

***“Planned Outage”*** means a complete removal of the Project from service, which such removal Seller reasonably expects to exceed twenty-four hours in duration and is taken by Seller to perform scheduled maintenance work, as set forth in Section 3.12(a).

***“Prime Rate”*** means the interest rate (sometimes referred to as the “base rate”) for large commercial loans to creditworthy entities announced from time to time by Citibank, N.A. (New York), or its successor bank, or, if such rate is not announced, the rate published in The Wall Street Journal as the “Prime Rate” from time to time (or, if more than one rate is published, the arithmetic average of such rates), in either case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by Applicable Law.

***“Product”*** has the meaning set forth in Section 3.1.

**“Project”** means the facilities described in Exhibit B hereto, inclusive of Seller’s Interconnection Facilities.

**“Project Capacity”** means the cumulative installed capacity of the Project, as set forth in Exhibit B, as such Exhibit may be amended in accordance with Section 3.4.

**“Project Investor”** or **“Project Investors”** means any and all Persons or successors in interest thereof (a) lending money, extending credit or providing loan guarantees (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; or (b) participating (directly or indirectly) as an equity investor (including a Tax Equity Investor) in the Project; or (c) any lessor under a lease finance arrangement relating to the Project.

**“Prudent Operating Practices”** means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric generation industry for solar facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and standards of economy and expedition. Prudent Operating Practices is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the industry.

**“Purchase Option”** has the meaning set forth in Section 2.2.

**“Purchase Option Closing Date”** has the meaning set forth in Section 2.2.

**“Purchase Option Date”** has the meaning set forth in Section 2.2.

**“Receiving Party”** has the meaning set forth in Section 12.1.

**“Referral Date”** has the meaning set forth in Section 16.2(a).

**“Renewal Term”** has the meaning set forth in Section 2.1.

**“Seller”** has the meaning set forth in the introductory paragraph of this Agreement.

**“Seller’s Interconnection Facilities”** means the interconnection facilities, control and protective devices and metering facilities required to connect the Project with the Buyer’s Interconnection Facilities, up to, and on Seller’s side of, the Delivery Point(s).

**“Settlement Amount”** means, with respect to the Non-Defaulting Party, the Losses *plus* Costs, *minus* Gains, expressed in U.S. Dollars, which such Party incurs as a result of a Terminated Transaction.

**“Site”** means, as to the Project, the real property on which the Project is or will be constructed and located, including any interests reasonably necessary for the construction, operation and maintenance of the Project, all as more specifically described in Exhibit B to this Agreement.

**“System Curtailment”** means any curtailment of delivery of Energy to the Delivery Point(s) as the result of any of the following: (a) an Emergency Condition or (b) a mandatory direction or order by a Governmental Authority to meet an Emergency Condition or a transmission system reliability need.

**“Tax Attributes”** means (a) investment tax credits and production tax credits (including any grants or payments in lieu thereof) and any other tax deductions or benefits under federal, state or other Applicable Law available as a result of the ownership and operation of the Project or the output generated by the Project (including tax credits, payments in lieu thereof and accelerated or bonus depreciation); and (b) present or future (whether known or unknown) cash payments, or outright grants of money relating in any way to the Project.

**“Term”** has the meaning set forth in Section 2.1.

**“Terminated Transaction”** means the termination of this Agreement in accordance with Section 7.2 of this Agreement.

**“Termination Payment”** has the meaning set forth in Section 7.3.

**“Test Energy”** means all of the Energy delivered to the Delivery Point(s) prior to the Commercial Operation Date.

**“Transformer Failure”** means a failure preventing delivery of Energy, which such failure relates to all or part of a transformer, circuit breakers or any or all other switchgear, line, and associated equipment constituting any portion of the Seller’s Interconnection Facilities, excluding in all cases any failure caused by the acts or omissions of Seller constituting a breach of this Agreement or the Interconnection Agreement.

**“Uncompensated Maintenance Event”** means maintenance on Buyer’s Electrical System (including testing, repair, and replacement), which such maintenance (a) is limited to five (5) Days in any three hundred sixty-five (365)-Day period, (b) occurs during non-daylight hours, (c) is performed on or after November 1 and on or before April 1, and (d) is Notified by Buyer to Seller with as much advance notice as reasonably practicable.

## **1.2 Interpretation.**

The following rules of construction apply when interpreting this Agreement:



- (a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine, and neuter;
- (b) words used or defined in the singular include the plural and vice versa;
- (c) references to Articles and Sections refer to Articles and Sections of this Agreement;
- (d) references to Annexes, Exhibits and Schedules refer to the Annexes, Exhibits and Schedules attached to this Agreement, each of which is made a part hereof for all purposes;
- (e) references to particular provisions of an Applicable Law include any rules and regulations promulgated thereunder;
- (f) terms defined in this Agreement are used throughout this Agreement and in any Annexes, Exhibits and Schedules hereto as so defined;
- (g) references to money refer to legal currency of the United States of America;
- (h) the words “includes” or “including” mean “including without limitation;”
- (i) the words “hereof,” “hereby,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not any particular Article or Section in which such words appear, unless otherwise specified;
- (j) all references to a particular entity include a reference to such entity’s successors and permitted assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;
- (k) references to any agreement, document or instrument mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;
- (l) the word “or” will have the inclusive meaning represented by the phrase “and/or, unless the context clearly indicates that an exclusive meaning is intended;”
- (m) the words “shall” and “will” mean “must”, and shall and will have equal force and effect and express an obligation; and
- (n) the words “writing,” “written” and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

## **ARTICLE 2**

### **TERM; PURCHASE OPTION**

#### **2.1 Term.**

The “*Initial Term*” hereof shall begin on the Effective Date and, unless earlier terminated in accordance with the terms and conditions of this Agreement, shall continue until December 31<sup>st</sup>

of the twentieth (20<sup>th</sup>) Contract Year. The Initial Term may be extended at the option of Buyer for two (2) extension terms of five (5) years each or by one ten (10) year extension term (the “**Renewal Term(s)**”), during which Renewal Term(s) the Contract Price shall be as set forth in Exhibit A. To exercise such option, Buyer must deliver written Notice of its election to Seller at least one hundred twenty (120) days prior to the expiration of the Initial Term or the initial Renewal Term, as applicable. The Initial Term and any Renewal Term(s) are collectively (the “**Term**”).

## **2.1 Purchase Option.**

(a) So long as a Buyer Default has not occurred and is continuing, Seller grants to Buyer an option to purchase the System (the “**Purchase Option**”) as of the sixth (6<sup>th</sup>) anniversary of the Commercial Operation Date and as of each anniversary thereafter through the end of the Term, subject to any earlier termination of this Agreement (each such anniversary, a “**Purchase Option Date**”), for a purchase price (the “**Option Price**”) equal to the *greatest of*: (i) the purchase price for the applicable Contract Year as set forth in Exhibit E; (ii) the Fair Market Value of the Project; and (iii) the net book value of the Project as of the date of Buyer’s Exercise Notice, calculated as the initial cost of the Project less accumulated depreciation, all as calculated in accordance with GAAP, plus the monetary value of any expenses, penalties, breakage costs, or other amounts due to third parties in connection with any acceleration, prepayment, restructuring, or breakage of any financing or hedge agreements affected by Buyer’s exercise of the Purchase Option (the “**Net Book Value**”). Buyer shall provide written Notice to Seller of Buyer’s intent to exercise the Purchase Option (“**Buyer’s Exercise Notice**”) not less than ninety (90) days prior to the applicable Purchase Option Date. Following receipt of Buyer’s Notice, Seller shall determine and Notify Buyer of the Fair Market Value and the Net Book Value. If Buyer disagrees with any determination of Fair Market Value (to the extent in excess of the Net Book Value), it shall Notify Seller in writing and the Parties shall determine the Fair Market Value in accordance with clause (b) below. Upon final determination of the Fair Market Value, but in any event on or before the Purchase Option Date (“**Purchase Option Closing Date**”): (A) the Parties shall promptly execute all documents necessary to: (I) cause title to the Project to pass to Buyer on an “as-is,” “where-is” basis; and (II) assign any transferable, outstanding warranties for the Project equipment to Buyer; and (B) Buyer shall pay the Option Price to Seller in immediately available funds. In the event Buyer needs an additional reasonable time period to appropriate additional funds, pursuant to Section 10.4(e), to meet its payment obligations under this section, then in such an event Buyer shall provide such written extension request to Seller, which shall not be unreasonably withheld or denied. Buyer shall also execute such documents reasonably necessary for Buyer to accept, assume and perform all then-existing agreements relating to the Project or the Delivered Energy, including operations and maintenance agreements, agreements relating to Environmental Attributes.

(b) If Buyer does not agree with Seller’s determination of Fair Market Value pursuant to clause (a) above, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry. The Parties shall cooperate in good faith to cause the appraiser to act reasonably and in good faith to determine Fair Market Value and to set forth such determination in a written opinion delivered to the Parties within twenty (20) days of the initial request for appraisal. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The cost of the appraisal shall be borne by Buyer. Notwithstanding the foregoing, if Seller enters into a sale/leaseback, lease pass-through, or

partnership flip transaction in connection with funding the installation of the Project, the process of determining the Fair Market Value of the Project in this Agreement will be the same as provided in the agreements for such sale/leaseback, lease pass-through or partnership flip transaction, if any such process is provided in connection with such transactions.

### **ARTICLE 3 OBLIGATIONS AND DELIVERIES**

#### **3.1 Product.**

The “**Product**” to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is Energy and Environmental Attributes, which are or can be produced by or associated with the Delivered Energy in accordance with the terms hereof.

#### **3.2 Sale and Purchase Obligations.**

Unless specifically excused by the terms of this Agreement and without limiting Section 3.3 with respect to Test Energy, beginning on the Commercial Operation Date, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, one hundred percent (100%) of the Delivered Energy, and Seller shall transfer to Buyer for no additional consideration all Environmental Attributes.

#### **3.3 Test Energy; Contract Price.**

Seller shall Notify Buyer at least fourteen (14) Days prior to the Seller’s commencement of generation and delivery of Test Energy to the Delivery Point(s), and subject to Seller’s delivery of such Notice, Buyer shall purchase such Test Energy at the Contract Price for the first (1<sup>st</sup>) Contract Year, as set forth in Exhibit A. Commencing on the Commercial Operation Date, Buyer shall pay Seller for each MWh of Delivered Energy at the applicable Contract Price set forth in Exhibit A.

#### **3.4 Project Capacity; Site Layout.**

(a) If, as of the Commercial Operation Date, the Project Capacity differs from that set forth in Exhibit B as of the Effective Date, then, within sixty (60) Days after the Commercial Operation Date, Seller shall provide Buyer with an amended Exhibit B and Exhibit C stating the revised Project Capacity reflecting the as-built Site layout. Such amended Exhibit B and Exhibit C will be deemed to amend and replace Exhibit B and Exhibit C attached to this Agreement as of the Effective Date.

(b) If, subsequent to the Effective Date, the location of the Site, location of the Delivery Point(s), or the Electric Metering Device(s), or the approximate location of any important ancillary facilities or Seller’s Interconnection Facilities or Buyer’s Interconnection Facilities shown on Exhibit B and Exhibit C as attached hereto on the Effective Date changes, Seller shall provide

Buyer with an amended Exhibit B and Exhibit C, and such amended Exhibit B and Exhibit C will be substituted for such Effective Date Exhibit B and Exhibit C.

### **3.5 Taxes.**

Seller shall pay, or cause to be paid, all taxes on or with respect to the production and delivery of Energy pursuant to this Agreement arising prior to the Delivery Point(s) (including taxes related to the ownership and/or operation of the Project and income derived therefrom). Buyer shall pay, or cause to be paid, all taxes on or with respect to Delivered Energy delivered pursuant to this Agreement at and from the Delivery Point(s) (including all sales, use, excise or other similar taxes on the purchase from Seller) as well as all PILOT Payments and/or property tax payments. If PILOT Payments and/or property tax payments are payable by Seller, then Buyer shall, within thirty (30) calendar days of receipt of an invoice and proof of payment by Seller, reimburse Seller for any such PILOT Payments and/or property tax payments. In the event Buyer needs an additional reasonable time period to appropriate additional funds, pursuant to Section 10.4(e), to meet its payment obligations under this section, then in such an event Buyer shall provide such written extension request to Seller, which shall not be unreasonably withheld or denied. Each Party shall use Commercially Reasonable Efforts to implement and administer the provisions of this Agreement in accordance with the intent of the Parties to minimize all taxes so long as neither Party is materially adversely affected by such efforts.

### **3.6 Offsets, Allowances, Environmental Attributes.**

(a) Buyer is entitled to all Environmental Attributes and Future Environmental Attributes subject to Section 3.6(b) resulting from Delivered Energy that is actually purchased by Buyer pursuant to this Agreement. Buyer will not be entitled to any Environmental Attributes resulting from Energy that Buyer, for any reason, does not accept and purchase under this Agreement. Unless otherwise agreed by the Parties, Seller shall be responsible for qualifying the Project's renewable energy certificates (RECs) and transferring such RECs to Buyer, or Buyer's agent, utilizing PJM Generation Attribute Tracking System (GATS), or its successors.

(b) The Parties acknowledge that future or existing legislation or regulation may create value in the ownership, use or allocation of the attributes (excluding Tax Attributes) of an environmental nature that are created or otherwise arise from the Project's generation of Energy from solar energy, which such environmental attributes do not exist as of the Effective Date ("***Future Environmental Attributes***"). In such event, Buyer may elect to claim such Future Environmental Attributes by Notice to Seller, as follows:

(i) Buyer shall Notify Seller of its desire to claim such Future Environmental Attributes and, to the extent known by Buyer, any changes to the Project or any agreements related to the Project, that would be required to qualify for such Future Environmental Attributes.

(ii) As soon as reasonably practicable after receiving Buyer's Notice under clause (i) above, Seller shall Notify Buyer (A) whether Seller is willing to undertake any Project changes or additional processes necessary to provide such Future Environmental Attributes to Buyer, which Seller may determine in a commercially reasonable manner that

it is not willing to do, and if Seller is so willing, (B) of a good faith estimate of the additional costs that Seller would incur (including any additional costs associated with the sale, purchase, transfer, qualification, verification, registration and ongoing compliance for and/or administration of such Future Environmental Attributes);

(iii) As soon as reasonably practicable after receiving Seller's good faith estimate under clause (ii) above, Buyer shall Notify Seller if Buyer elects to receive such Future Environmental Attributes.

(iv) If Buyer so elects to receive such Future Environmental Attributes in accordance with clause (iii) above, (A) Seller shall undertake such changes or additional processes in a commercially reasonable manner, (B) Seller shall transfer to Buyer and Buyer shall own or be entitled to claim such Future Environmental Attributes, (C) Seller shall be entitled to invoice Buyer in accordance with Section 8.1 for the additional costs incurred by Seller in connection with the delivery of such Future Environmental Attributes, and Buyer shall pay the amounts stated in such invoices in accordance with Section 8.1.

(c) Seller will be entitled to all (i) federal and state production tax credits, investment tax credits and any other Tax Attributes which are or will be generated by the Project, (ii) any cash payments, grants under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 or outright grants of money relating in any way to the Project or Environmental Attributes, and (iii) any Environmental Attributes that the Buyer is not entitled to pursuant to the provisions of Section 3.6(a). Buyer acknowledges that Seller has the right to sell any Environmental Attributes to which it is entitled pursuant to this Section 3.6(c) to any Person other than Buyer at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Buyer hereunder. Buyer will have no claim, right or interest in such Environmental Attributes or in any amount that Seller realized from the sale of such Environmental Attributes.

### **3.7 Buyer Excuses.**

Buyer's obligation to receive and pay for one hundred percent (100%) of the Delivered Energy will be excused only to the extent of: (a) an event of Force Majeure that prevents Buyer from receiving such Energy at the Delivery Point(s); (b) a System Curtailment, *provided that* any such System Curtailment was not caused by conditions or activities of Persons that, in either case, are under Buyer's control; (c) an Uncompensated Maintenance Event; or (d) Seller's breach of this Agreement or the Interconnection Agreement (collectively, clauses (a) through (d), the "**Buyer Excuses**").

### **3.8 Transmission; Distribution.**

(a) Buyer will be responsible for arranging for any and all distribution or transmission services required to effectuate Buyer's purchase of Product, including obtaining firm distribution or transmission service (as necessary), in an amount of capacity equal to the Project Capacity, and will be responsible for the payment of any charges related to such services hereunder, including charges for distribution, transmission, or wheeling services, ancillary services, imbalance, control area services, congestion charges, transaction charges and line losses. The Parties acknowledge

that the Contract Price does not include charges for such services, all of which will be paid by Buyer.

(b) In the event that any Governmental Authority exercising control over the Buyer's Interconnection Facilities or the Buyer's Electrical System takes any action or orders Seller or Buyer to take any action that affects Buyer's ability to take delivery of Energy hereunder, Buyer shall use Commercially Reasonable Efforts (at its own cost and expense) to mitigate the adverse effects of such action(s) on Buyer's ability to perform its obligations hereunder.

### **3.9 PJM Jurisdiction.**

(a) Buyer covenants that, during the Term of this Agreement, Buyer shall not, without Seller's prior written consent, request designation of the Project as a Network Resource or request any alternate designation under the PJM Tariff. Buyer acknowledges and agrees that Seller may withhold its consent of such request in Seller's sole and absolute discretion. In addition, Buyer agrees that Seller may condition its consent upon the Parties' mutual execution of an amendment to this Agreement providing for (i) Buyer's reimbursement to Seller and its Affiliates for any costs or liabilities that Seller or any of its Affiliates may incur in connection with such request or designation, as well as (ii) Seller's right to relief from any obligations under this Agreement or under the Interconnection Agreement, to the extent reasonably necessary to accommodate such request or designation. If Seller consents to such request and such designation is achieved pursuant to the PJM Tariff and any other direction of PJM, such designation shall constitute a "***Consented Designation.***"

(b) If a Consented Designation occurs: (i) Buyer shall become the Market Participant for the System (or shall arrange at its sole cost and expense for the services of a Market Participant) for the purposes of scheduling, selling, or administering the Environmental Attributes from the Project with PJM; (ii) Buyer shall be responsible for the scheduling, sale, and other administration of the Environmental Attributes from the Project during the Term in compliance with PJM standards; and (iii) Buyer shall be responsible for and entitled to any and all charges and credits respectively as a result of its status as the Market Participant for the Project.

(c) Absent a Consented Designation, Buyer shall not take any action or inaction to submit the Project to PJM jurisdiction.

(d) Seller covenants that, during the Term of this Agreement so long as Buyer has not suffered an uncured Event of Default, Seller shall not request designation of the Project as a Network Resource or request any alternate designation under the PJM Tariff.

### **3.10 Guaranteed Energy Production.**

Seller guarantees that the Project will produce Energy in accordance with the provisions of Exhibit D. If Seller fails to achieve the Guaranteed Energy Production, it shall be liable to Buyer for Energy Production Damages as set forth in Exhibit D.

### **3.11 Buyer Curtailment.**

(a) Buyer may curtail all or any part of the deliveries of Energy (“***Buyer Curtailment***”) in accordance with this Section 3.11; provided, that Buyer provides prompt notice to Seller of the Buyer Curtailment as follows:

(i) Buyer shall provide notice to Seller for each Buyer Curtailment, which such notice may be by telephone, *provided*, that it is promptly confirmed thereafter in writing (which may be electronic mail). Buyer shall provide Seller one-hour notice prior to the end of any period of such curtailment.

(ii) Upon notice to Seller, Buyer shall have the right to undertake a Buyer Curtailment through a disconnecting device such as a reclosure device or gang-operated air break switch.

(iii) Buyer and Seller shall work cooperatively to effectuate Buyer’s remote monitoring capabilities of Seller’s reclosure device(s) but, for the avoidance of doubt, Buyer will have no direct control over Seller’s reclosure device(s).

(iv) Each notice of curtailment shall state a beginning time (such beginning time not to be earlier than fifteen (15) minutes after Seller’s receipt of such curtailment notice) and may be superseded by subsequent notices by Buyer to Seller providing for the return of curtailed portions of the Project to normal operation.

(b) Buyer shall pay Seller the Contract Price for Compensable Deemed Delivered Energy. Such payment obligation shall be invoiced by Seller and paid by Buyer in accordance with Section 8.1 of this Agreement.

(c) All notices under this Section 3.11 may be accomplished by electronic mail.

### **3.12 Outage Notification.**

(a) On or before December 1 of each year, Seller will provide to Buyer a non-binding Planned Outage schedule for the forthcoming calendar year. If, during the Term, Seller needs to schedule a Planned Outage not previously scheduled in accordance with the first sentence of this clause (a), Seller shall notify Buyer, as far in advance as is practicable under the circumstances, of such proposed Planned Outage, and the Parties shall plan such outage of capacity to mutually accommodate the reasonable requirements of Buyer; provided, however, Buyer’s requirements, absent Emergency Conditions, shall not unduly prejudice or jeopardize the operation and maintenance of the Project. Such notice of a proposed Planned Outage shall include the expected start date of the outage, the amount of the Project Capacity that will be affected by the outage, and the expected completion date of the outage. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall use Commercially Reasonable Efforts to comply with Buyer’s request to reschedule any such Planned Outage. As soon as reasonably practical, any such notifications given orally shall be confirmed in writing. Seller shall not during the four (4)-month

period of June through September, inclusive, schedule any Planned Outage that reduces the Energy generation capability of the Project by more than ten percent (10%), unless (i) such Planned Outage is required to avoid damage to the Facility, (ii) such Planned Outage is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such Planned Outage is required in accordance with prudent electrical practices and cannot be scheduled outside the months of June through September, (iv) such Planned Outage is required to maintain compliance with regulatory standards, or (v) the Parties agree otherwise in writing.

(b) In addition to Planned Outages, Seller shall use Commercially Reasonable Efforts to promptly Notify Buyer of any Forced Outage lasting for more than twenty-four (24) consecutive hours. Such Notices must contain information describing the nature of the Forced Outage, the beginning date and time of such Forced Outage, the expected end date and time of such Forced Outage, the amount of Energy that Seller expects will be delivered to the Delivery Point(s) during such Forced Outage, and any other information reasonably requested by Buyer.

(c) All notices under this Section 3.12 may be accomplished by electronic mail.

### **3.13 [Reserved.]**

### **3.14 Casualty.**

If at any time during the Term the Project is so severely damaged by fire or other casualty that substantial alteration, reconstruction or restoration is required, then Seller shall have the right, but not the obligation, to reconstruct or restore the Project, and if Seller elects to do so, then this Agreement shall remain in full force and effect, without change, for the remainder of the Term. If Seller fails to provide Notice of its intention to reconstruct or restore the System within ninety (90) days after any such casualty, this Agreement shall terminate. Buyer waives any claims that may arise as a result of termination pursuant to this Section 3.14; provided, that such termination will not discharge or relieve either Party from any obligation that has accrued prior to such termination or any indemnity or confidentiality obligations under this Agreement, which provisions will survive any termination of this Agreement.

### **3.15 Change of Law.**

Without limiting any other terms of this Agreement (including Section 3.9, Section 6.1, and Section 18.17), if a Change of Law either (a) renders this Agreement or any terms herein incapable of being performed or administered, or (b) subjects either Party's performance under this Agreement to significantly more burdensome regulation or materially increases the taxes or tariffs applicable to either Party, then, in either case, the affected Party may, on Notice to the other Party, request the other Party to enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered and to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Effective Date. Upon receipt of such Notice requesting negotiations, the Parties shall negotiate in good faith. If the Parties are unable, within sixty (60) Days after the deemed delivery of the Notice requesting negotiations, either to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolution proceedings as provided in ARTICLE 16.



Solely in the event a Change of Law renders it impossible for (i) Seller to generate and deliver, or (ii) Buyer to take delivery of Delivered Energy, then pending the resolution of a dispute related to a Change of Law neither Party shall be obligated to perform under this Agreement.

**3.16 [Reserved.]**

**3.17 Project Upgrades.**

Seller will review any potential Project upgrade options and notify Buyer of the details of such upgrade(s), no later than one (1) year prior to the end of the Term, with a final decision on such an upgrade being made by mutual agreement of the Parties no fewer than six (6) months prior to the end of the Term.

**3.18 Coordination with Buyer's Load-Serving Entity**

Seller acknowledges that the Project, upon commercial operation, shall be a source of supply for Buyer to serve its retail customers. Buyer currently contracts with a third-party to serve as its Load-Serving Entity for purposes of supplying its additional energy supply requirements. Seller agrees to reasonably coordinate in good faith with Buyer's Load-Serving Entity, as designated by the Buyer in its sole discretion, to facilitate the Project being relied upon as such a source of energy supply, including allowing Buyer to share information about the Project, for purposes of the Buyer's periodic efforts to secure wholesale supply to serve its retail customers. Buyer is not restricted from changing its Load-Serving Entity during the Term.

**ARTICLE FOUR  
PROJECT DESIGN AND CONSTRUCTION**

**4.1 Project Development.**

Except as expressly set forth herein, Seller, at no cost to Buyer, shall:

- (a) Design and construct the Project in accordance with this Agreement, Applicable Laws, and Prudent Operating Practices;
- (b) Be solely responsibility for the development, design and construction of the Project and Seller's Interconnection Facilities, including the obligation to obtain all Governmental

Approvals necessary for the ownership, construction, operation and maintenance of the Project and delivery of Energy in accordance with the terms hereof;

(c) Acquire all Governmental Approvals and other approvals necessary for the construction, ownership, operation, and maintenance of the Project;

(d) Complete all environmental impact studies necessary for the construction, ownership, operation, and maintenance of the Project;

(e) At Buyer's request, provide Seller's electrical specifications and design drawings pertaining to the Project to Buyer; and

(f) Commencing on the Effective Date until the Commercial Operation Date, provide to Buyer a monthly progress report, all in the form set forth in Exhibit H, and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction, commissioning, or testing progress.

#### **4.2 Interconnection Readiness; Interconnection Costs.**

(a) Buyer shall use Commercially Reasonable Efforts to achieve Interconnection Readiness on or prior to the Interconnection Readiness Deadline.

(b) The Interconnection Readiness Deadline shall be extended on a day-for-day basis for each Day (i) that Interconnection Readiness is not achieved as a result of (A) event(s) of Force Majeure, (B) any COVID-19 Delay, or (C) any COVID-19 Event, or (ii) after the date that is sixty (60) Days after the Effective Date that the Parties have not mutually executed and delivered an Interconnection Agreement with respect to the Project in form and content acceptable to Seller in its commercially reasonable discretion (collectively, the "***Interconnection Extensions***").

(c) Buyer shall, using Commercially Reasonable Efforts, be responsible for timely completion and delivery of all interconnection studies, the Interconnection Agreements, and shall be responsible for costs associated with Buyer's Interconnection Facilities, as well as all interconnection upgrade costs, including any costs arising from affected portions of Buyer's Electrical System or any other distribution or transmission systems connected to Buyer's Electrical System. Seller shall be responsible for Buyer's reasonable costs associated with its interconnection studies.

#### **4.3 Commercial Operation Date.**

(a) Subject to subsection (b) below, Seller shall use Commercially Reasonable Efforts to achieve Commercial Operation on or prior to the Anticipated Commercial Operation Date. Seller shall achieve Commercial Operation on or prior to the Guaranteed Commercial Operation Date, which such date shall be extended on a day-for-day basis as follows (each of the following, a "***Permitted Extension***"):

(i) for each Day that Commercial Operation is not achieved as a result of any delay or failure by Buyer, including (A) any breach by Buyer hereunder or under the Interconnection Agreement or (B) any failure, refusal, or inability of Buyer to permit

interconnection of the Project to Buyer's Interconnection Facilities for any reason not solely attributable to a Seller breach, in all cases, whether or not Buyer's failure, refusal, inability, or delay is caused by any conditions or events of Force Majeure, COVID-19 Event, or COVID-19 Delay;

(ii) for each Day after the date that is sixty (60) Days after the Effective Date that the Parties have not mutually executed and delivered an Interconnection Agreement with respect to the Project in form and content acceptable to Seller in its commercially reasonable discretion;

(iii) for each Day after the Interconnection Readiness Deadline that Buyer has not achieved Interconnection Readiness;

(iv) for each Day that Commercial Operation is not achieved as a result of Seller's inability, despite its Commercially Reasonable Efforts, to acquire any necessary Governmental Approvals; or

(v) for each Day that Commercial Operation is not achieved as a result of any (A) event(s) of Force Majeure, (B) COVID-19 Delay, or (C) COVID-19 Event.

(b) Notwithstanding anything to the contrary in this Agreement, Seller's failure to achieve Commercial Operation on or prior to the Anticipated Commercial Operation Date shall not constitute a failure of Seller to perform a material covenant or obligation set forth in this Agreement and shall in no event give rise to an Event of Default by Seller.

(c) Seller shall pay to Buyer the Daily Delay LD for each day past the Guaranteed Commercial Operation Date (as extended pursuant to this Agreement) up to the Daily Delay LD Cap.

#### **4.4 COD Conditions.**

The Parties shall cooperate to facilitate Seller's testing of the Project necessary to satisfy the COD Conditions. Seller shall provide Buyer Notice of the date Seller believes that the Project has achieved the following COD Conditions:

(a) The Project is available to deliver Energy to the Delivery Point(s) in accordance with Prudent Operating Practices;

(b) Seller has received all Governmental Approvals required by Applicable Law for the construction, operation and maintenance of the Project; and

(c) Seller has received final acceptance from Buyer to interconnect the Project pursuant to the Interconnection Agreement.

### **ARTICLE 5 METERING AND MEASUREMENT**

## 5.1 Metering System.

(a) The Electric Metering Device(s) used to measure the Delivered Energy and to monitor and coordinate operation of the Project shall be owned, installed, and maintained by Seller in accordance with Prudent Operating Practices at no cost to Buyer. Seller shall provide Buyer with reasonable opportunity to be present at any time the Electric Metering Device(s) is to be inspected and tested or adjusted. In addition, Buyer shall have the right, upon ten (10) Business Day's prior Notice to Seller and at Buyer's cost and expense, to inspect and test the Electronic Metering Device annually. Upon Buyer's reasonable request, Seller shall also provide, in writing, the results of any such inspections or testing of the Electric Metering Device(s) conducted by Seller, no later than thirty (30) Days after such inspections or tests are conducted. Seller shall also make available to Buyer, at no cost to Buyer, a web-based platform for access to data from the Electronic Metering Device(s).

(b) Either Buyer or Seller may elect to install and maintain, at the installing Party's own expense, one or more backup metering devices ("**Back-Up Metering**") in addition to the Electric Metering Device(s), which installation and maintenance shall be performed in accordance with Prudent Operating Practices. The installing Party, at its own expense, shall inspect and test Back-Up Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of such Party to witness and verify, such inspections and tests, provided, however, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable Site rules and applicable safety standards. Upon the non-installing Party's reasonable request, the installing Party shall perform additional inspections or tests of Back-Up Metering and shall permit a qualified representative of the non-installing Party to inspect or witness the testing of Back-Up Metering, provided, however, that such other Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all Site rules and applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(c) If the Electric Metering Device(s) or Back-Up Metering, as applicable, is found to be defective or inaccurate by more than two percent (2%), the installing Party shall promptly repair or replace such Electric Metering Device(s) or Back-Up Metering at that Party's expense.

(d) The anticipated location of the Electric Metering Device(s) is depicted on the Interconnection Three-Line Diagram attached in Exhibit C. Seller may update such location in accordance with Section 3.4.

## ARTICLE 6 EARLY TERMINATION

## **6.1 Early Termination.**

Prior to the Commercial Operation Date, Seller may terminate this Agreement at any time and for any reason, immediately upon Notice to Buyer. Upon such termination, Seller shall pay Buyer a termination amount equal to Buyer's Losses plus Costs, minus Gains. Notwithstanding the foregoing, Seller's termination payment to Buyer shall be limited solely to reimbursements to Buyer for any costs incurred by Buyer associated with Buyer's Interconnection Facilities up to a cap of one million dollars (\$1,000,000) ("Non-Fault Termination Payment") if (i) despite good faith negotiations, the Parties fail to execute a Lease Agreement for the Project within ninety (90) days of the Effective Date, (ii) Seller terminates as the result of an AD/CVD Matter but only if such termination is made at least one hundred twenty (120) days prior to the Anticipated Commercial Operation Date, or (iii) Seller terminates as a result of circumstances (other than AD/CVD Matters) that are outside Seller's control (including a Change of Law or failure to obtain required Governmental Approvals or financing commitments). Subject to the foregoing, Buyer waives any claims that may arise as a result of termination pursuant to this subsection; provided, that such termination will not discharge or relieve either Party from any obligation that has accrued prior to such termination or any indemnity or confidentiality obligations under this Agreement, which provisions will survive any termination of this Agreement.

## **ARTICLE 7 EVENTS OF DEFAULT**

### **7.1 Events of Default.**

An "*Event of Default*" means,

(a) with respect to a Party that is subject to the Event of Default (the "*Defaulting Party*") the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof; provided, however, that if such failure is not reasonably capable of being remedied within the thirty (30) day cure period, such Party will have such additional time (not exceeding an additional ninety (90) days) as is reasonably necessary to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy.

(vi) such Party or its guarantor (if applicable) becomes Bankrupt; or

(b) with respect to Buyer as the Defaulting Party, the occurrence of any of the following:

(i) Buyer fails to achieve Interconnection Readiness on or prior to the Outside Interconnection Readiness Deadline for any reason not solely attributable to Seller's breach of this Agreement or the Interconnection Agreement, regardless of any COVID-19 Delay, COVID-19 Event, or any event(s) of Force Majeure;

(ii) Buyer fails, refuses, or is unable to interconnect or permit the interconnection of the Project to Buyer's Interconnection Facilities prior to December 31, 2023, for any reason not solely attributable to Seller's breach of this Agreement or the Interconnection Agreement, regardless of any COVID-19 Delay, COVID-19 Event, or any event(s) of Force Majeure; or

(iii) interconnection of the Project to Buyer's Interconnection Facilities is not feasible as a result of Buyer's breach of the Interconnection Agreement, which such breach remains uncured as of the earlier of (A) thirty (30) Days after Seller's delivery of Notice of such breach and (B) the Outside Interconnection Readiness Deadline.

## **7.2 Remedies; Declaration of Early Termination Date.**

Subject to Section 13.2(c) (*Collateral Assignment*), if an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party ("***Non-Defaulting Party***") will have the right to:

(a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("***Early Termination Date***"); and

(b) collect the Termination Payment; provided, however, that, in the case of Seller as the Defaulting Party, if the Event of Default occurs prior to the Commercial Operation Date, the Termination Payment may not exceed ten thousand dollars (\$10,000) per MW of the Project Capacity; and

(c) suspend performance; and

(d) in the case of Buyer as the Defaulting Party, Seller may remove any portion of the Project from the Site at Buyer's expense (in accordance with Section 7.6); provided, however, that Seller shall have no obligation to perform any such removal unless and until Seller has received any Termination Payment due from Buyer.

## **7.3 Termination Payment.**

Subject to Section 7.2(b), the "***Termination Payment***" will be the U.S. Dollar amount equal to (a) the Settlement Amount, *plus* (b) any and all other amounts due to the Non-Defaulting Party by the Defaulting Party, *minus* (c) any and all other amounts due to the Defaulting Party by the Non-Defaulting Party. Except in the case of a termination of this Agreement by the Non-Defaulting

Party solely as a result of an Event of Default by the Defaulting Party under Section 7.1(a)(iv), if the Non-Defaulting Party's Gains exceed the aggregate of its Losses and Costs, if any, resulting from the Terminated Transaction, the Termination Payment will be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Settlement Amount as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount may not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any categories of Losses or Costs expressly included in the respective definitions of such terms will be deemed direct damages covered by this Agreement. Each Party agrees and acknowledges that (x) the actual damages that the Non-Defaulting Party would incur in connection with the termination of this Agreement would be difficult or impossible to predict with certainty, (y) the Termination Payment described in this Section 7.3 is a reasonable and appropriate approximation of such damages, and (z) the Termination Payment described in this Section 7.3 is the exclusive remedy of the Non-Defaulting Party in connection with the termination of this Agreement but will not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect to terminate this Agreement as its remedy for an Event of Default by the Defaulting Party.

#### **7.4 Notice of Payment of Termination Payment.**

As soon as practicable after a designation of the Early Termination Date, the Non-Defaulting Party shall Notify the Defaulting Party whether the Termination Payment is due to the Non-Defaulting Party, and if so, the amount of the Termination Payment. If the Termination Payment is due, such Notice shall also include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. Buyer's obligation to pay any Termination Payment is subject to the Maximum Financial Obligation pursuant to Section 10.4(e). The Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective or, as this provision applies to Buyer, as soon as reasonably practical after the date that Buyer has received all necessary Buyer authorizations and/or approvals as provided in Section 10.4(e), whichever is later.

#### **7.5 Disputes with Respect to Termination Payment.**

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days after receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment will be determined in accordance with ARTICLE 16.

#### **7.6 Mitigation.**

Any Non-Defaulting Party shall use Commercially Reasonable Efforts to mitigate its costs and losses resulting from any Event of Default of the other Party or Terminated Transaction under this Agreement.

## **ARTICLE 8 PAYMENT**

### **8.1 Billing and Payment.**

On or about the tenth (10<sup>th</sup>) Day of each month, beginning with the month following the Commercial Operation Date and every month thereafter, and continuing through and including the first month following the end of the Term, Seller shall provide to Buyer an invoice setting forth (a) the quantity of Energy that was delivered to the Delivery Point(s) in the immediately preceding month, (b) the total amount due for such Delivered Energy (which amount shall be the product of the Delivered Energy and the applicable Contract Price), and (c) any other amounts due to Seller or credited to Buyer under this Agreement, including any payments due for Compensable Deemed Delivered Energy in accordance with Section 3.11(b). Buyer shall pay the undisputed amount of such invoices on or before the date that is thirty (30) Days after date of the applicable invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment must be provided on or before the next following Business Day. Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the applicable due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by electronic mail.

### **8.2 Disputes and Adjustments of Invoices.**

A Party may, in good faith, (a) dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement, or (b) adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice must be made when due. Any invoice dispute or invoice adjustment must be in writing and must state the basis for the dispute or adjustment. Payment of the disputed amount will not be required until the dispute is resolved. Upon resolution of the dispute, any required payment must be made within five (5) Business Days of such resolution. Inadvertent overpayments will be returned upon request no later than ten (10) Business Days after such request. If no such request is made, any overpayments shall be applied to the next invoice per Section 8.3. Any dispute with respect to an invoice is waived if the other Party is not Notified in accordance with this Section 8.2 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period.

### **8.3 Netting of Payments.**

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period



under this Agreement will be netted so that only the excess amount remaining due will be paid by the Party who owes it.

## **ARTICLE 9 INSURANCE**

### **9.1 Insurance.**

In connection with Seller's performance of its duties and obligations under this Agreement, as of the Commercial Operation Date and continuing through the Term, Seller shall maintain insurance in accordance with Exhibit F. Buyer shall be named as an additional insured on all required insurance policies.

## **ARTICLE 10 REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **10.1 Representations and Warranties.**

On the Effective Date, each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has obtained all Governmental Approvals required to authorize the execution, delivery and performance of this Agreement and such Governmental Approvals are in full force and effect, except, in the case of Seller, for those Governmental Approvals which have not yet been obtained but which Seller anticipates will be obtained in the ordinary course of business prior to the Commercial Operation Date;

(c) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary corporate action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law, except, in the case of Seller, for those authorizations which have not yet been obtained but which Seller anticipates will be obtained in the ordinary course of business prior to the Commercial Operation Date;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same;

(e) it 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;

(f) except as may be set forth in its reports filed with the U.S. Securities and Exchange Commission, there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

(h) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement;

(i) such Party agrees and acknowledges that this Agreement is a service contract pursuant to Section 7701(e)(3) of the Internal Revenue Code; and it is a forward contract merchant within the meaning of the United States Bankruptcy Code, that this Agreement is a forward contract within the meaning of the United States Bankruptcy Code, and that the remedies identified in this Agreement shall be contractual rights as provided for in 11 U.S.C. SS 556 as that provision may be amended from time to time.

(j) Supply Chain Integrity. Seller represents and warrants to Buyer that Seller shall use commercially reasonable efforts to ensure that its suppliers, contractors, and other business partners involved in the design and construction of the Facility and the mining, production, or manufacture of any of its material components do not, in any material manner, use any form of Forced Labor in violation of the Forced Labor Act or the CBP Order (following the issuance of the CBP Order) at any stage in the development, construction and ongoing operation and maintenance of the Facility.

## **10.2 General Covenants.**

Each Party covenants that throughout the Term:

(a) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(b) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(c) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law; and

(d) it shall not dispute its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

### **10.3 Seller Covenants.**

Seller covenants that, beginning on the Commercial Operation Date and continuing through the Term, it shall operate and maintain the Project in accordance with this Agreement, Applicable Laws, and Prudent Operating Practices.

### **10.4 Buyer’s Additional Representations, Warranties, and Covenants.**

(a) Buyer represents and warrants that, as of the Effective Date and continuing throughout the Term, Buyer’s obligations under this Agreement qualify and will continue to qualify as operating expenses.

(b) from the date hereof through the expiration or termination of this Agreement, Buyer shall comply with this Agreement and Applicable Laws;

(c) Buyer will, at Seller’s expense, reasonably cooperate with Seller in opposing, and will not support any action of any regulatory body having jurisdiction thereover that could result in the modification or vitiation of any of the terms or conditions hereof or have any other material adverse effect on Seller, the Project or this Agreement;

(d) Buyer has provided to Seller its most recent financial statements, which such statement present fairly, in all material respects, the financial condition and results of operations of Buyer, and Buyer shall provide updated financial statements upon Seller’s reasonable request;

(e) Buyer Maximum Financial Obligation:

(i) The maximum financial obligation of the Buyer pursuant to this Agreement is limited to those funds annually appropriated and authorized by its City Council to be expended pursuant to this Agreement (the “**Maximum Financial Obligation**”). For any period where the Buyer has authorized, increased or renewed the Maximum Financial Obligation pursuant to this Agreement, the provisions of this Agreement shall apply in all respects except that the Buyer’s maximum obligation under this Agreement shall reflect the authorized increased or renewed amount subsequently appropriated and authorized by its City Council.

(ii) It is the Buyer’s intention to authorize, increase, or renew its Maximum Financial Obligation pursuant to this Agreement in such a manner as to make available funds for Test Energy, Delivered Energy, Compensable Deemed Delivered Energy, PILOT Payments and/or property tax payments under Section 3.5, any applicable payments under Section 3.6, any applicable transmission and distribution payments under Section 3.8, the Option Price (if applicable) and the Termination Payment (if applicable) and in recognition thereof the Buyer shall consider proposals for such funding, through its City Council at the

time of the presentation of its annual budget to the City Council or at such other times as are appropriate for a timely increase in the Buyer's Maximum Financial Obligation.

(iii) In the event that (1) the Buyer's Maximum Financial Obligation is not authorized, increased, or renewed; or (2) any Termination Payment is not authorized or appropriated (such occurrence, a "***Non-Appropriation***"), the result of which is the termination of the Buyer's financial obligation hereunder, the Buyer covenants that it will not, for any period of time throughout the remaining Term of this Agreement: (a) operate or maintain in an operable condition for the generation of electric power and energy, solar photovoltaic facilities at the Site that operate for the benefit of the Buyer; or (b) appropriate funds for the purchase of solar electric power and/or energy from, any other solar electric power project or source that is directly connected to the Buyer's electric distribution system other than for/from (A) the Seller or (B) the specific renewable projects set out in Exhibit G that the City of Columbus has entered into existing contracts for or which are in the final stages of planning or development as of the date of the Non-Appropriation.

(iv) The Buyer further agrees to not unfairly discriminate against the Seller and its obligations under this Agreement in the event of and following Non-Appropriation for the duration of this Agreement, vis-a-vis the City of Columbus other obligations with respect to payments for the City of Columbus' necessary services.

(v) Buyer covenants that, in the event any payment hereunder (including payment of the Termination Payment) is or becomes subject to any necessary appropriation, Buyer shall use its best efforts to appropriate necessary funds to satisfy such obligations, and not to discriminate between such obligations and its other obligations with respect to payments for necessary services;

(vi) Buyer agrees that any failure of Buyer to make payment as a result of any non-appropriation shall constitute a Buyer Event of Default; and

(vii) Buyer waives, to the fullest extent permitted by Applicable Law, any claim for sovereign immunity associated with any liability hereunder.

## **ARTICLE 11**

### **TITLE, RISK OF LOSS, INDEMNITIES**

#### **11.1 Title and Risk of Loss.**

Title to and risk of loss related to the Product will transfer from Seller to Buyer at the Delivery Point(s). Seller shall deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to or at the Delivery Point(s).

#### **11.2 Indemnities by Seller.**

Seller shall fully indemnify and defend Buyer, its Affiliates, and Agents, on an After-Tax Basis, from and against any and all liabilities, claims, and expenses incurred in connection with or arising from the following:

(a) any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (i) the negligence or willful misconduct of Seller or its Agents or others under Seller's control, or (ii) a Seller Event of Default;

(b) taxes or assessments that are Seller's responsibility; and

(c) any (i) Seller requested designation of the Project as a Network Resource or requested alternate designation consistent with the PJM Tariff, or (ii) other action or inaction taken by Seller, its Affiliates, or its Agents, which such action or inaction submits the Project to PJM jurisdiction, unless Buyer has suffered an uncured Event of Default, which in such a case, this subsection 11.2(c) shall not apply.

### **11.3 Notice of Claims.**

A Party seeking indemnification hereunder (the "***Indemnified Party***") shall deliver, to the other Party (the "***Indemnifying Party***"), a Notice describing the facts underlying its indemnification claim and the amount of such claim (each such Notice a "***Claim Notice***"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives Notice that an action at law or a suit in equity has commenced; provided, failure to deliver the Claim Notice will not relieve the Indemnifying Party of its obligations under this Section 11.3, except to the extent that such Indemnifying Party has been prejudiced by such failure.

### **11.4 Defense of Action.**

If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party will have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section 11.4 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding, or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent of the Indemnifying Party, which consent may not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement will be paid upon demand by the Indemnifying Party.

### **11.5 Buyer Acknowledgement.**

Buyer acknowledges and agrees that Seller's indemnification obligation shall not extend to liabilities, claims, and expenses incurred with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person to the extent caused by (a) the negligence or willful misconduct of Buyer or its Agents or others under Buyer's control, or (b) a Buyer Event of Default.

## **ARTICLE 12**

### **CONFIDENTIAL INFORMATION**

#### **12.1 Confidential Information.**

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Project or such Party's business that they consider confidential and proprietary, including, without limitation, data, trade data, trade secrets, technology, information pertaining to business operations and strategies; information pertaining to customers, pricing, and marketing; and infrastructure records and security records as defined in Ohio Revised Code 149.433 (together with the terms and conditions of this Agreement, the "Confidential Information"). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "*Disclosing Party*") may make such Confidential Information available to the other (each, a "*Receiving Party*") subject to the provisions of this Section 12.1.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall:

(i) Treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as authorized by the prior written consent of the Disclosing Party or as required by law, subject to the restrictions set forth below;

(ii) Restrict access to such Confidential Information to only those Agents, Affiliates, advisors, counsel, Project Investors, potential Project Investors (as well as the counsel or advisors of such Project Investors or potential Project Investors) whose access is reasonably necessary for the development, construction, operation or maintenance of the Project; provided, that each Party will be responsible for any breach of this Section 12.1 by such Persons; and

(iii) Use such Confidential Information solely for the purpose of developing the Project and for purposes of this Agreement.

(b) The restrictions of this Section 12.1 do not apply to:

(i) Release of this Agreement to any Governmental Authority required for obtaining any approval or making any filing, provided, that each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law;

(ii) Information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;

(iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party, provided, that the Person or Persons developing such information have not had access to any Confidential Information;

(iv) Information which is received from a third party which is not known (after due inquiry) by Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation;

(v) Information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law (including any Freedom of Information Act request); provided, however, that the Receiving Party, prior to such disclosure, shall provide reasonable advance Notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure; and

(vi) Information which is a public record as defined by Ohio's Public Records Law (Ohio Revised Code 149.43 et seq. (the "**Act**")).

(c) The Parties acknowledge that the Buyer is a public office subject to the Act. The Act generally requires the Buyer, upon proper request, to prepare and make available "public records" (as defined in the Act) within a reasonable period of time, unless the subject of the requested materials fall within one of the exemptions from the Act's disclosure requirements. The Parties recognize and acknowledge that certain types of records, materials and information are exempted from the Act's disclosure requirements including but not limited to the following: infrastructure records and security records (Ohio Revised Code 149.433); trade secrets and economic development project information (Ohio Revised Code 122.36 and 1333.61 et seq.); and tax returns and related information (Ohio Revised Code 718.13, 5703.21, and 5711.101).

(d) In the event that the Buyer receives a request pursuant to the Act for documents, materials or information related to this Agreement or Seller, the Buyer shall promptly provide a copy of that request to Seller. If Seller does not promptly notify the Buyer of the records that should not be released, and/or take action to prevent the release of such records, the Buyer shall release the requested records and shall have no liability for the release.

(e) The Parties agree that certain information provided to the Buyer by or on behalf of Seller may be exempt from the disclosure requirements of the Act. Seller hereby agrees to designate in writing any information provided to the Buyer that Seller considers to be exempt from disclosure requirements of the Act (collectively, "**Exempted Materials**"). Any Exempted Materials related to this Agreement, the Project or Seller and clearly marked as such by Seller shall be treated by the Buyer as exempt from disclosure under the Act, and not as public records, and

the Buyer will not release such Exempted Materials to any third party without prior written notice to Seller, per Section 12(e) above, or unless mandated by a court of competent jurisdiction. It will be the responsibility of Seller, not the Buyer, to defend the designation of any information as exempt from disclosure under the Act, including initiation of any court proceedings necessary to prevent disclosure as a public record. Seller shall indemnify the Buyer against all costs, expenses and damages in connection with any such defense/exemption legal proceeding, including without limitation attorneys' fees incurred by reason of that dispute.

(f) The Parties agree that certain information provided to Seller by or on behalf of the Buyer may disclose the configuration of its electric supply system or other critical infrastructure that is exempt from disclosure as a public record pursuant to Ohio Revised Code 149.433. The Buyer seeks to maintain the exempt status under Ohio Revised Code 149.433 of any and all records or data that pertain to the configuration of its critical infrastructure.

(g) Seller shall treat as Confidential Information any records or data in any form that disclose the configuration of the Buyer's electric supply system or any other critical infrastructure system ("***Critical Electric Info***") to any party unless provided for within this Agreement. Following the Buyer's written request, within thirty (30) days of the expiration or termination of this Agreement, Seller shall destroy or return any such Critical Electric Info that disclose the configuration of the Buyer's critical infrastructure. Seller shall not be deemed to have retained or failed to return or destroy any such Critical Electric Info if it is received or stored in digital format and is deleted from local hard drives so long as no attempt is made to recover it from servers or back-up sources, provided that any such retained Critical Electric Info shall remain subject to the disclosure and use restrictions set forth herein, notwithstanding any termination or expiration of this Agreement.

(h) Except as otherwise provided for in this Section 12.1, if the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide: (a) to the extent permitted under the law and to the extent reasonably practicable, prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and (b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

(i) Neither Party may issue any press or publicity release or otherwise release, distribute or disseminate any information, with the intent that such information will be published (other than information that is, in the reasonable written opinion of counsel to the Disclosing Party, required to be distributed or disseminated pursuant to Applicable Law, provided, that the Disclosing Party has given Notice to, and an opportunity to prevent disclosure by, the other Party as provided in this Agreement, concerning this Agreement or the participation of the other Party



in the transactions contemplated hereby without the prior written approval of the other Party, which approval will not be unreasonably withheld, conditioned, or delayed. This provision will not prevent the Parties from releasing information which is required to be disclosed in order to obtain Governmental Approvals and other third-party approvals relating to the Project or as are necessary in order to fulfill such Party's obligations under this Agreement).

(j) The obligations of the Parties under this Section 12.1 will remain in full force and effect for two (2) years following the expiration or termination of this Agreement.

## **ARTICLE 13 ASSIGNMENT**

### **13.1 Successors and Assigns; Assignment.**

(a) This Agreement will inure to the benefit of and will be binding upon the Parties and their respective successors and assigns. Subject to clause (b) below, this Agreement may not be assigned or transferred by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed.

(b) Notwithstanding the foregoing and contingent upon the assignment of the Other Project Agreements, no consent will be required for:

(i) Any assignment of this Agreement by Seller to any Project Investors as collateral security for obligations under the financing documents entered into with such Project Investors; or

(ii) Any assignment or transfer of this Agreement by Seller to an Affiliate of Seller, including through merger, including by operation of law, consolidation or sale of all or substantially all of Seller's stock, interests or assets to or with such Affiliate.

(c) Buyer acknowledges that upon an event of default under any financing documents relating to the Project, any of the Project Investors may (but will not be obligated to) assume, or cause its designee or a new lessee or purchaser of the Project to assume, all of the interests, rights and obligations of Seller thereafter arising under this Agreement, provided, that regardless of whether any such Project Investor or its designee assumes all of the interests, rights and obligations of Seller thereafter arising under this Agreement, Buyer's interests, rights and obligations under this Agreement will remain in full force and effect.

(d) The provisions of this ARTICLE 13 are for the benefit of the Project Investors as well as the Parties hereto, and will be enforceable by the Project Investors as express third-party beneficiaries hereof. Buyer hereby agrees that none of the Project Investors, nor any bondholder or participant for whom they may act or any trustee acting on their behalf, will be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or will have any obligation or liability to Buyer with respect to this Agreement except to the extent any of them becomes a party hereto pursuant to this ARTICLE 13.

(e) Any purported assignment in violation of this Section 13.1 shall be null and void.

### **13.2 Collateral Assignment.**

In the event Seller collaterally assigns its rights hereunder to a Project Investor as security, any related Project Investor consent shall contain provisions substantially as follows:

(a) Seller and Buyer shall neither modify nor terminate this Agreement other than as provided therein, without the prior written consent of the Project Investor.

(b) The Project Investor shall have the right, but not the obligation, to do any act required to be performed by Seller under this Agreement, and any such act performed by the Project Investor shall be as effective to prevent or cure a default as if done by Seller itself.

(c) If Buyer becomes entitled to terminate this Agreement due to an uncured Seller Event of Default, Buyer shall not terminate this Agreement unless it has first given Notice of such uncured Seller Event of Default to the Project Investor and has given the Project Investor the same cure periods afforded to Seller under this Agreement, plus an additional thirty (30) days beyond Seller's cure period to cure any monetary Seller Event of Default and an additional one hundred twenty (120) days beyond Seller's cure period to cure any non-monetary Seller Event of Default; provided, if the Project Investor requires possession of the Project in order to cure the Seller Event of Default, and if the Project Investor diligently seeks possession, the Project Investor's additional thirty (30) day or one hundred twenty (120) day cure period, as applicable, shall not begin until foreclosure is completed, a receiver is appointed or possession is otherwise obtained by or on behalf of the Project Investor.

(d) The Project Investor will not be obligated to perform, or be liable for, any obligation of Seller under this Agreement until and unless assumed through the exercise of the Project Investor's rights and remedies.

(e) Any Person assuming this Agreement through the exercise of the Project Investor's rights and remedies shall remain subject to the terms of this Agreement and shall assume all of Seller's obligations under this Agreement including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. If the Project Investor, or its successor, assumes this Agreement in accordance with this subparagraph (e), Buyer shall continue this Agreement with the Project Investor or its successor, as the case may be, substituted wholly in the place of Seller.

(f) If the Project Investor, or its successor, assumes this Agreement in accordance with Section 13.2(e), within ninety (90) days of any termination of this Agreement in connection with any bankruptcy or insolvency Event of Default of Seller, the Project Investor (or its successor) and Buyer shall enter into a new power purchase agreement on the same terms and conditions as this Agreement and for the period that would have been remaining under this Agreement but for such termination.

(g) Buyer shall: (i) execute any consents to assignment or acknowledgements; and (ii) provide such opinions of counsel as may be reasonably requested by Seller or the Project Investor in connection with the financing or sale of the Project, in each case at Seller's expense.

## **ARTICLE 14**

### **FORCE MAJEURE**

#### **14.1 Force Majeure Events.**

(a) *Force Majeure Event* means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, other than the obligation to pay amounts due, but only to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

(b) Subject to clause (a) above, events that could qualify as a Force Majeure Event includes the following:

(i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;

(iii) except as set forth in subpart (c)(ii) below, strikes, work stoppage or other labor disputes (in which case the affected Party will have no obligation to settle the strike or labor dispute on terms it deems unreasonable);

(iv) environmental and other contamination at or affecting the Project;

(v) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to or adjuncts of shipping or navigation, or quarantine;

(vi) nuclear emergency, radioactive contamination or ionizing radiation or the release of any hazardous waste or materials;

(vii) air crash, shipwreck, train wrecks or other failures or delays of transportation;

(viii) vandalism beyond that which could be reasonably prevented by Seller;

(ix) the discovery of Native American burial grounds not evidenced in Seller's Phase I archeological assessment of the Site;

(x) actions or inactions by any Governmental Authority taken after the Effective Date, but only if such actions, or inactions prevent or delay performance of a Party hereunder (and provided that such actions or inactions are not the result of such Party's failure to comply with Applicable Law);

(xi) the discovery of threatened or endangered species, as defined by Applicable Law; or

(xii) with respect to Seller as the affected Party: a Transformer Failure.

(c) Notwithstanding anything in clause (a) or (b) above to the contrary, a Force Majeure Event may not be based on:

(i) lack of money or changes in economic or market conditions;

(ii) a strike, work stoppage or labor dispute limited only to any one or more of Seller or Seller's Affiliates;

(iii) with respect to Buyer as the affected Party: (A) Buyer's inability economically to use or resell the Product purchased hereunder; (B) the inability of Buyer to obtain transmission or distribution service or the unavailability or interruption of transmission or distribution service; (C) any inability by Buyer to achieve Interconnection Readiness on or before the Interconnection Readiness Deadline; (D) any inability by Buyer receive energy at the Delivery Point(s) as a result of (I) breach of any interconnection agreement between Buyer and a local electric utility, unless caused by the occurrence of an event that would otherwise be a Force Majeure hereunder or (II) any other cause or event that does not physically prevent Buyer from receiving energy at the Delivery Point(s); or

(iv) with respect to Seller as the affected Party: (A) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement; (B) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by a Force Majeure Event; or (C) Seller's failure to obtain financing or other funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement.

(d) To the extent either Party is prevented by a Force Majeure Event, COVID-19 Delay, or COVID-19 Event from carrying out, in whole or part, its obligations under this Agreement and such Party gives Notice and details of the Force Majeure Event, COVID-19 Delay or COVID-19 Event to the other Party as detailed below, then, the Party impacted by the Force Majeure Event, COVID-19 Delay or COVID-19 Event will be excused from the performance of its obligations to the extent impacted. As soon as practicable after learning of the commencement of a Force

Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of learning of the commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim.

(e) The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Buyer will not be required to make any payments for any Product that Seller fails to schedule, deliver or provide as a result of a Force Majeure Event during the term of such Force Majeure Event.

(f) This Agreement may be terminated by either Party with no further obligation to the other Party if such Force Majeure Event prevents the performance of a material portion of the obligations hereunder and such Force Majeure Event is not resolved within twelve (12) months after the commencement of such Force Majeure Event; provided, however, if Seller is the non-performing Party, Seller will have up to ninety (90) days following such Force Majeure Event to obtain a report from an independent, third-party engineer stating whether the Project is capable of being repaired or replaced within twenty-four (24) additional months or less from the date of the report and provide Buyer a copy of the engineer's report, at no cost to Buyer. If such engineer's report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer will not have the right to terminate this Agreement pursuant to this Section 14.1 until the expiration of the period deemed necessary by the engineer's report (not to exceed twenty-four (24) months), after which time, Buyer may terminate unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying its performance obligations under this Agreement.

## **ARTICLE 15**

### **LIMITATIONS ON LIABILITY**

#### **15.1 Disclaimer of Warranties.**

SELLER MAKES NO REPRESENTATIONS AND WARRANTIES OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT. SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND OTHER IMPLIED WARRANTIES, OBLIGATIONS AND INDEMNITIES.

#### **15.2 Limitations on Liability.**

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN

ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. EXCEPT FOR SELLER'S INDEMNITY OBLIGATION IN RESPECT OF THIRD PARTY CLAIMS, OR AS OTHERWISE EXPRESSLY HEREIN PROVIDED, NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## **ARTICLE 16 DISPUTE RESOLUTION**

### **16.1 Intent of the Parties**

Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement (a “**Dispute**”) is the dispute resolution procedure set forth in this ARTICLE 16. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the Dispute by means of the dispute resolution procedure set forth in this ARTICLE 16.

### **16.2 Management Negotiations**

(a) The Parties will attempt in good faith to resolve any Dispute by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a “**Manager**”). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved on or before the fifteenth (15th) Business Day of the Managers' first meeting (“**Initial Negotiation End Date**”), the Managers shall refer the matter to the designated senior officers of the respective Parties, which such officers have authority to settle the dispute (“**Executives**”). On or before the fifth (5th) Business Day after the Initial Negotiation End Date (“**Referral Date**”), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days after the Referral Date, the Executives shall establish a mutually acceptable location and date, which date may not be later than thirty (30) days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations will be confidential, subject to Article 12.1, and may not be used or referred to in any subsequent binding adjudicatory process between the Parties.

(d) If the matter is not resolved within forty-five (45) Days after the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 16.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 16.2(a) above, and subject to Sections 15.2 (*Limitations on Liability*), 18.7 (*Governing Law*) and 18.9 (*Venue*) of this Agreement, either Party may pursue all remedies available to it at law or in equity.

### **16.3 Specific Performance and Injunctive Relief.**

Except with respect to Seller's obligation to construct the Project, each Party may seek a decree compelling specific performance with respect to, and may, without the necessity of filing any bond, seek to restrain by injunction, any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance or restraint by injunction agree that they shall each request that all expenses incurred in such proceeding, including reasonable counsel fees, be apportioned in the final decision based upon the respective merits of the positions of the Parties.

## **ARTICLE 17 NOTICES**

### **17.1 Notices.**

Whenever this Agreement requires or permits delivery of a "**Notice**" (or requires a Party to "**Notify**"), unless otherwise specified in this Agreement, the Party with such right or obligation shall provide a written communication in the manner specified in herein and to the addresses set forth below. Invoices may be sent by electronic mail. A Notice sent by electronic mail will be recognized and will be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier will be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Each Party shall provide Notice to the other Party of the persons authorized to nominate or agree to a schedule or dispatch order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

If to Seller:

DG Columbus Jackson Pike, LLC  
700 Universe Boulevard, A1A/JB  
Juno Beach, FL 33408  
Attention: DG Business Management  
Telephone: (561) 304-5299  
E-Mail: DL-DG-NEER-BUS-MGT@fpl.com

With additional notices of an Event of Default to:

DG Columbus Jackson Pike, LLC  
c/o NextEra Energy Resources, LLC  
700 Universe Boulevard, FEI/JB  
Juno Beach, FL 33408  
Attention: Managing Attorney  
Telephone: (561) 304-5617  
E-mail: NEER-General-Counsel@nexteraenergy.com

If to Buyer: City of Columbus, Division of Power  
3500 Indianola Avenue  
Columbus, OH 43214  
Attn: Patricia A. Austin P.E.  
Telephone: (614) 645-3978  
E-mail: paaustin@columbus.gov

## **ARTICLE 18 MISCELLANEOUS**

### **18.1 Survival.**

Unless expressly specified otherwise in this Agreement, all indemnity rights will survive the termination or expiration of this Agreement for the longer of twelve (12) months or the expiration of the statute of limitations period of the claim underlying the indemnity obligation. Notwithstanding any provisions herein to the contrary, a Defaulting Party's obligation ARTICLE 15 (*Limitations on Liability*) and any other limitations on liabilities set forth herein will survive (in full force) the expiration or termination of this Agreement. Additionally, the obligations hereunder that, by their sense and context, are intended to survive termination of this Agreement (including any obligation to pay the Termination Payment) will survive the expiration or termination of this Agreement to the extent necessary to give them full effect.

### **18.2 Audits.**

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and will bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless a Party objects to the accuracy thereof no later than twelve (12) months after receipt of such statement or payment, and thereafter any objection will be deemed waived except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after such twelve (12)-month period.



### **18.3 Amendments.**

Except as expressly set forth herein, this Agreement may not be modified nor amended unless such modification or amendment must be in writing and signed by authorized representatives of both Parties.

### **18.4 Waivers.**

Except as expressly set forth herein: (a) failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement will not constitute a waiver as to that matter nor to any other matter, and (b) any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver will not be deemed a waiver with respect to any subsequent default or other matter.

### **18.5 Severability.**

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement will remain in effect; provided that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any Applicable Law and the intent of the Parties.

### **18.6 Standard of Review.**

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a Person or the Federal Energy Regulatory Commission acting sua sponte will be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) (the “Mobile-Sierra” doctrine).

### **18.7 Governing Law.**

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER WILL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

### **18.8 Venue.**

Each of the Parties hereto hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement shall be brought in or removed to the courts of the Southern District of Ohio, or, if such court lacks or declines jurisdiction, the Franklin County Court of Common Pleas *or other applicable Franklin County court*, and, by execution and delivery of

this Agreement and such other documents executed in connection herewith, each Party hereby: (a) accepts the non-exclusive jurisdiction of the aforesaid courts; (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents; (c) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action or proceedings brought in any such court has been brought in any inconvenient forum; (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth below, or at such other address of which the other Parties hereto shall have been notified; and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or limit the right to bring any suit, action or proceeding in any other jurisdiction.

#### **18.9 Waiver of Jury Trial.**

EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

#### **18.10 Attorneys' Fees.**

In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party will be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

#### **18.11 No Third-Party Beneficiaries.**

Except as set forth herein, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein will be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

#### **18.12 No Agency.**

This Agreement is not intended, and will not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party will have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

### **18.13 Cooperation.**

The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make Commercially Reasonable Efforts to cooperate and assist each other in making such change.

### **18.14 Further Assurances.**

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party may unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 18.14.

### **18.15 Captions; Construction.**

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement will be construed simply according to its fair meaning and not strictly for or against any Party.

### **18.16 Entire Agreement.**

This Agreement will supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

### **18.17 No Public Utility.**

Neither Party will assert that Seller is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any Governmental Authority as a result of Seller's obligations or performance under this Agreement. If, at any time as a result of any Change of Law, Seller would be subject to regulation as an electric utility or public service company (or its equivalent) by any Governmental Authority by virtue of this Agreement, Buyer shall use its best efforts to restructure this Agreement so that Seller will not be subject to such regulation (while preserving for both Parties the substantive economic benefits conferred by this Agreement). Buyer shall not take any action which would cause Buyer or Seller to become an electric utility or public service company under Applicable Law.

### **18.18 Subcontractors.**

Without limiting Seller's liability or obligations under this Agreement, Seller may use subcontractors to satisfy any obligation under this Agreement.

**18.19 Counterparts.**

This Agreement may be executed in several counterparts, each of which will be an original and all of which together will constitute but one and the same instrument.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –  
SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF the Parties have executed this Agreement in the manner appropriate to each on the date set forth above.

**DG COLUMBUS JACKSON PIKE, LLC**


By: 

Name: Matthew G. Ulman

Title: Vice President

Date: 12/27/2021

**CITY OF COLUMBUS DEPARTMENT OF  
PUBLIC UTILITIES**

By: 

Name: Ann M. Aubry

Title: Interim Director

Date: 12.28.2021

Approved as to form:



Zach Klein  
Columbus City Attorney

**EXHIBIT A**  
**CONTRACT PRICE**

<b>CONTRACT YEAR</b>	<b>CONTRACT PRICE (\$/MWh)</b>
Initial Term	\$53.38
Renewal Term	\$53.38

## **EXHIBIT B**

### **DESCRIPTION OF PROJECT**

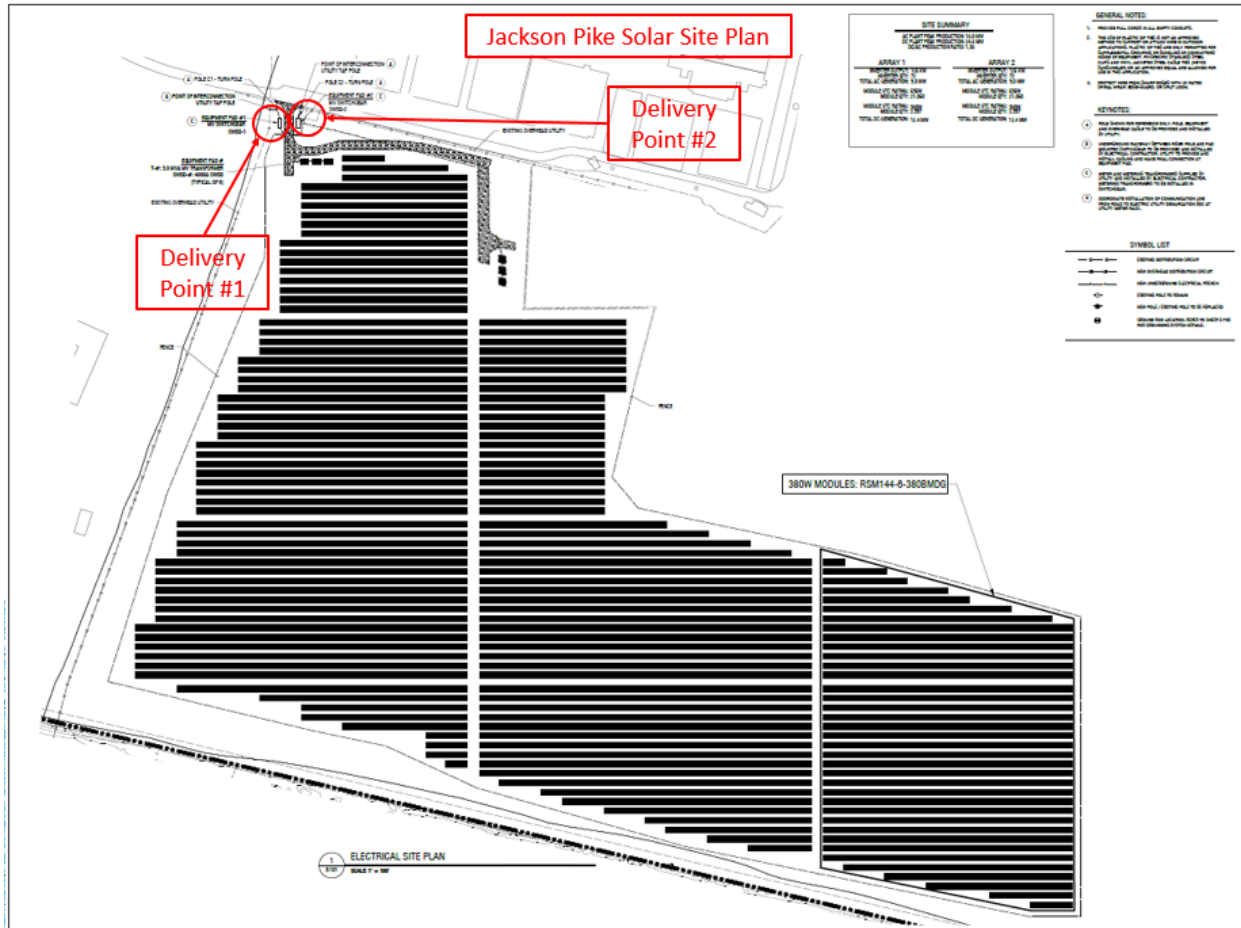
**General:** The Project is a photovoltaic solar energy generation facility comprised of two (2) approximately 9.0 MWAC systems, each with its own point of interconnection (i.e., Delivery Point), for an aggregate nameplate capacity of approximately 18.0 MWAC (i.e., Project Capacity).

**Location of Site:** 2104 Jackson Pike, Columbus, OH 43223 (Parcel 010-095230-00)

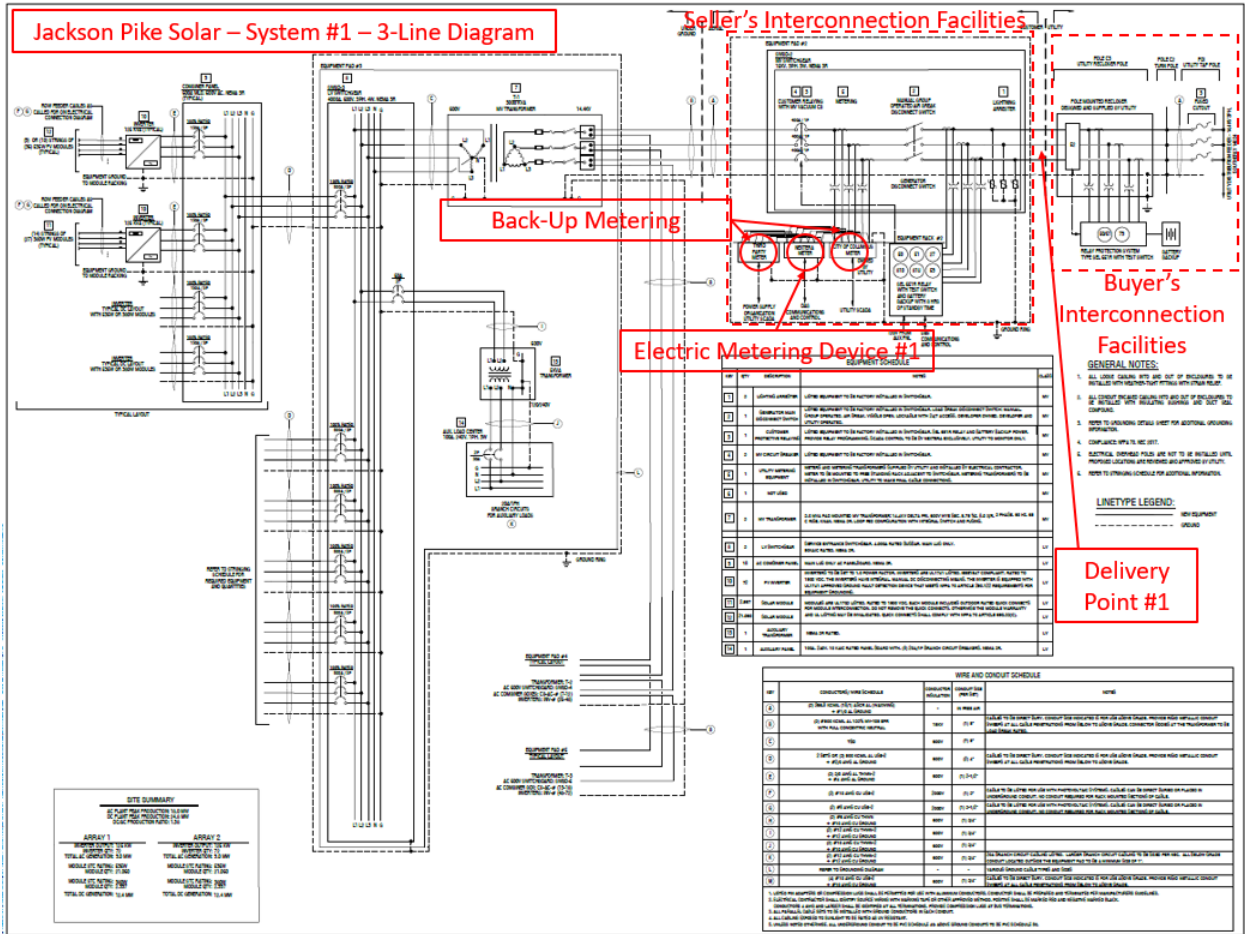
**Project Scope:** The Project consists of photovoltaic modules, racking structures, inverters, transformers, electrical switchgear, cables, roads, fences, Electric Metering Device(s), communications equipment and other related electrical components that comprise the Project up to and including Seller's Interconnection Facilities. The Project also includes all development, engineering and installation costs directly attributable to constructing the Project. Last, the Project includes all administrative, monitoring and maintenance costs associated with the Project as required under this Agreement.

## EXHIBIT C

### DESCRIPTION OF DELIVERY POINT(S) AND THREE-LINE DIAGRAM







## Seller's Interconnection Facilities



## Electric Metering Device #2

## Buyer's Inter-connection Facilities

GENERAL NOTES:

1. ALL LIVE CABLES INTO AND OUT OF ENCLOSURES TO BE INSTALLED WITH ADDITIONAL TIE-ROPS WITH STRAIN RELIEF.
2. ALL CIRCUT BREAKER CABLES INTO AND OUT OF ENCLOSURES TO BE INSTALLED WITH INSULATING GASKING AND DUCT SEAL COMPOUND.

LINETYPE LEGEND:

\_\_\_\_\_ **100.00**

Delivery  
Point #2

**EXHIBIT D**  
**GUARANTEED ENERGY PRODUCTION**

1. **Definitions.** Capitalized terms used in this **Exhibit D** and not defined herein shall have the meaning assigned in the Agreement.

- (a) “***Annual Production Estimate***” means the estimated energy production of the Project for a Contract Year, as set forth in **Attachment 1** to this **Exhibit D**.
- (b) “***Energy Production Report***” means a report generated by Seller for the study, sizing, simulation and data analysis of the Project.
- (c) “***Energy Shortfall Amount***” means, with respect to a Measurement Period, an amount equal to the product of: (i) the positive difference, if any, of the average Utility Rate minus the average Contract Price for such Measurement Period; *multiplied by* (ii) the difference between the Delivered Energy for such Measurement Period and the Guaranteed Energy Production for such Measurement Period.
- (d) “***Utility Rate***” means Buyer’s avoided cost of energy.

2. **Guaranteed Energy Production.**

- a. Commencing with the second (2<sup>nd</sup>) Contract Year, and for each Contract Year thereafter during the Term, if the aggregate metered output of the Project for the previous Contract Year (the “***Measurement Period***”) is less than eighty percent (80%) of the Annual Production Estimate for such Measurement Period, Seller shall promptly generate an as-built weather adjusted Energy Production Report for the Project for each applicable Contract Year, which accounts for actual weather data for such Contract Year, and Seller shall promptly revise the Annual Production Estimate for such Contract Year based on the as-built weather adjusted Energy Production Report for such Contract Year (the “***Weather Adjusted Annual Production Estimate***”). Seller shall furnish such as-built weather adjusted Energy Production Report and Weather Adjusted Annual Production Estimate to Buyer by no later than sixty (60) days after the conclusion of the Measurement Period. Notwithstanding anything in the Agreement to the contrary, Seller guarantees that, in any Measurement Period, the Project will produce not less than eighty percent (80%) of the applicable Weather Adjusted Annual Production Estimate (the “***Guaranteed Energy Production***”); provided, the Guaranteed Energy Production for any Measurement Period will be reduced by the estimated generation of the Project that would have been generated during such Measurement Period, but was not generated, due to one or more of the following causes: (a) any Buyer Curtailment or Deemed Buyer Curtailment; (b) any System Curtailment, (c) any maintenance or other non-Emergency outages of Buyer’s Interconnection Facilities or other components of Buyer’s Electrical System, (d) any Planned Outage or

Forced Outage, (e) an event of Force Majeure (including any event of Force Majeure that prevents Buyer from receiving Energy at the Delivery Point(s)); (f) buildings or structures constructed after the Commercial Operation Date overshadowing or otherwise blocking access or sunlight to the Project or any other interference with the solar irradiance on or at the Site; (g) a breach of the Agreement by Buyer; (h) a Transformer Failure;; or (i) a casualty, event, as contemplated by Section 3.14 of the Agreement.

- b. If the Delivered Energy of the Project during any Measurement Period does not equal or exceed the Guaranteed Energy Production for such Measurement Period, Seller shall include in its next invoice(s) to Buyer (and in the final invoice for any credit owed for the final Contract Year) a credit for the Energy Shortfall Amount. Seller shall calculate and provide notice to Buyer of any Energy Shortfall Amount due to Buyer in the next invoice. Seller shall, within thirty (30) Business Days after providing such notice, credit to Buyer the Energy Shortfall Amount (such credit, the “*Energy Production Damages*”).
3. **Sole Remedy.** The Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any failure to meet the Guaranteed Energy Production shall be the credit of Energy Production Damages pursuant to this **Exhibit D**, and shall not be subject to the collection of any other damages or any other remedies, including specific performance.

**ATTACHMENT 1 TO EXHIBIT D**  
**ANNUAL PRODUCTION ESTIMATE**

<b>Contract Year</b>	<b>Annual Production Estimate (MWh)</b>
1	27,593
2	27,455
3	27,318
4	27,181
5	27,045
6	26,910
7	26,776
8	26,642
9	26,508
10	26,376
11	26,244
12	26,113
13	25,982
14	25,852
15	25,723
16	25,594
17	25,466
18	25,339
19	25,212
20	25,086

**EXHIBIT E**  
**PURCHASE OPTION – PURCHASE PRICE SCHEDULE**

<b>Contract Year</b>	<b>Purchase Price (\$ 000)</b>
1	\$24,689
2	\$22,500
3	\$20,287
4	\$18,055
5	\$15,798
6	\$13,517
7	\$12,868
8	\$12,194
9	\$11,490
10	\$10,756
11	\$9,985
12	\$9,182
13	\$8,341
14	\$7,462
15	\$6,538
16	\$5,574
17	\$4,563
18	\$3,504
19	\$2,389
20	\$1,224

## **EXHIBIT F**

### **INSURANCE REQUIREMENTS**

**Insurance Requirements.** Seller shall carry and maintain or cause to be carried and maintained no less than the insurance coverages listed below, applicable to all operations undertaken by Seller and Seller's personnel. Such minimum limits may be satisfied either by primary insurance or by any combination of primary and excess/umbrella insurance. The following required insurance coverages shall be maintained in effect throughout the Term of this Agreement:

(o) Worker's compensation insurance with statutory limits in accordance with the state(s) in which activities subject to this agreement will take place and employer's liability insurance with limits no less than \$1,000,000 disease, accident and policy limit;

(p) Commercial general liability insurance including premises and operations liability, products and completed operations liability, contractual liability, and personal and advertising injury with a combined single limit not less than \$1,000,000 for bodily injury and property damage. If this coverage is subject to a deductible or self-insured retention, it shall not exceed \$100,000;

(q) Automobile liability insurance covering all owned, hired, lease or borrowed automobiles with a limit no less than \$2,000,000 per accident for bodily injury or property damage;

(r) Excess or umbrella liability insurance covering above the employer's liability portion of this Exhibit and above the limits required in clauses (b) and (c) with limits no lower than \$5,000,000; and

(s) Property insurance on the Project written on a probable maximum loss basis, containing no coinsurance provisions.

**Scope of Insurance.** Seller shall, no later than ten (10) Days after the Effective Date and thereafter on or before the renewal date of the applicable policy, cause each insurer or authorized agent to provide Buyer with one original copy of insurance certificate reasonably acceptable to Buyer evidencing the insurance coverages required to be maintained.

(a) All such insurance policies shall:

(i) name Buyer as an additional insured (except in the case of employer's liability/worker's compensation insurance) and shall contain a "Cross-Liability" or "Severability of Interest" Endorsement;

(ii) be endorsed to waive any and all rights of subrogation against Buyer and Buyer's officers, directors, affiliates, agents, and employees;

(iii) provide that prior to any cancellation, non-renewal or reduction in coverage (other than by the occurrence of a claim), Buyer shall receive thirty (30) Days (ten (10) Days for nonpayment of premium) prior notice; and

(iv) in the case of any liability insurance, be primary with respect to any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and any insurance carried by Buyer shall be excess of and noncontributing with insurance afforded by Seller.

(b) All liability insurance policies shall be written on an occurrence basis unless procured from AEGIS on a claims made basis. In the event any policy is a “claims made” policy, it shall contain a retroactive date prior to the Effective Date or such other date as agreed by Buyer and a five (5) year extended reporting period following the expiration of this Agreement.

(c) Any and all premiums and deductibles and/or any other charges due with respect to such policies of insurance shall be assumed by, for the account of, and at Seller’s sole risk.



**EXHIBIT G**  
**CITY OF COLUMBUS EXISTING AND LATE-STAGE RENEWABLE PROJECTS**

1. Those certain solar projects developed by Affiliates of Seller, near the Parsons Avenue Water Plant at 5600 Parsons Ave., Lockbourne, OH, and near the Southerly Wastewater Treatment Plant at 6977 S High St., Lockbourne, OH 43137.
2. That certain solar project developed by Columbus Solar Park LLC and located on land leased from SWACO at the sanitary landfill between Jackson Pike and I-71.
3. The DOP's Entitlement to NYPA Preference Power.
4. Any net metering program being developed by DOP.
5. DOP's utilization of any output from the O'Shaughnessy Dam hydroelectric project.

# **EXHIBIT H** **MONTHLY PROGRESS REPORT**

PROJECT SUMMARY			
Project Name:	Jackson Pike Solar	Monthly Progress Report Date	__/__/202__
Lead Developer:	Adam Siegelstein	Region	Ohio / PJM

PROJECT OVERVIEW	
Location:	
Size:	
Assumed Equipment:	
Target COD	

KEY UPDATES; STATUS	
Real Estate	
Regulatory / Permitting	
Environmental / Cultural	
Engineering & Construction	
Procurement	
Miscellaneous	