

POWER PURCHASE AGREEMENT

AMONG

RHUDES CREEK SOLAR, LLC,

LOUISVILLE GAS AND ELECTRIC COMPANY

AND

KENTUCKY UTILITIES COMPANY

November 21, 2019

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LIST OF EXHIBITS

Exhibit A	Notice Addresses
Exhibit B	Insurance Coverages
Exhibit C	Form of Surety Bond
Exhibit D	Production Model Variables and Methodology
Exhibit E	Form of Guaranty

**Power Purchase Agreement
among
Rhudes Creek Solar, LLC,
Louisville Gas and Electric Company, and Kentucky Utilities Company**

This Power Purchase Agreement (this “PPA”) is made as of November 21, 2019, by and among (i) **Rhudes Creek Solar, LLC** (“Seller”), a Delaware limited liability company with a principal place of business at c/o ibV Energy Partners LLC, 777 Brickell Ave., Suite 500, Miami, FL 33131, (ii) **Louisville Gas and Electric Company** (“LG&E”), a Kentucky corporation with a principal office at 220 West Main Street, Louisville, Kentucky 40202, and (iii) **Kentucky Utilities Company** (“KU”), a Kentucky and Virginia corporation with its principal office at One Quality Street, Lexington, Kentucky 40507. LG&E and KU are sometimes hereinafter referred to individually as “Buyer” and collectively (and severally liable as provided in Section 12.6 below) as the “Buyers.”

WHEREAS, Seller desires to develop, design, construct, own or lease, and operate a solar photovoltaic electric generating facility in Hardin County, Kentucky with an expected total maximum power output of approximately but not more than 100 MWac and not less than the Minimum Demonstrated Capacity, and which is defined below as the “Facility”; and

WHEREAS, Seller desires to sell and deliver to Buyers at the Point of Interconnection the Solar Energy Output generated by the Facility and any Renewable Energy Benefits associated with such Solar Energy Output.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

**ARTICLE 1
Definitions and Rules of Interpretation**

1.1 Rules of Construction. The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this PPA, whether in the singular or the plural or in the present or past tense. Other terms used in this PPA but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Prudent Industry Practice. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

- (A) The masculine shall include the feminine and neuter.
- (B) Unless such a reference states otherwise, references to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this PPA.

(C) The Exhibits attached hereto are incorporated in and are intended to be a part of this PPA; provided, that in the event of a conflict between the terms of any Exhibit and the body of this PPA, the body of this PPA shall take precedence.

(D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

(E) Except with respect to any provision of this Agreement stating that a Party may exercise its sole discretion, (i) the Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (ii) where the PPA requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (iii) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”

(G) The words “shall” and “will” have equal force and effect.

(H) The words “herein,” “hereof,” or “hereunder” or similar terms refer to this PPA as a whole and not to any specific section or article.

1.2 Interpretation with Interconnection Agreement.

(A) The Parties recognize that Seller will enter into a separate Interconnection Agreement with the Interconnection Provider. Notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement, nor any alleged event of default thereunder, shall alter or modify Seller’s or Buyers’ rights, duties and obligations under this PPA, and nothing in this Agreement, nor any alleged event of default hereunder, shall alter or modify the rights, duties and obligations of Seller or the Interconnection Provider under the Interconnection Agreement.

(B) Except and only to the extent expressly stated otherwise herein, Seller expressly recognizes that, for purposes hereof, the Interconnection Provider and shall be deemed to be a separate entity and separate contracting party from Buyers whether or not the Interconnection Agreement is entered into with a Buyer or an Affiliate of Buyer, in its capacity as the Interconnection Provider. Seller acknowledges that Buyers, acting in their capacity as the purchasers hereunder, have no responsibility for or control over Interconnection Provider, and are not liable under this Agreement for any breach of any obligation or duty of the Interconnection Provider under the Interconnection Agreement.

1.3 Interpretation of Arrangements for Utility Supply to the Facility. This PPA does not provide for the supply of retail electric power or natural gas to the Facility (“House

Energy”). Seller shall contract with the local utility in whose retail service territory the Facility is located (“Local Provider”) for the supply of House Energy. If a Buyer is the Local Provider, Seller’s arrangements for the supply of House Energy to the Facility and this PPA shall be separate and free-standing arrangements. For purposes of this PPA, the Local Provider shall be treated as a separate entity and separate contracting party, whether or not the Local Provider is a Buyer or an Affiliate of a Buyer. Notwithstanding any other provision in this PPA, nothing in Seller’s arrangements for the supply of House Energy to the Facility shall alter or modify Seller’s or Buyers’ rights, duties and obligations under this PPA.

1.4 Definitions. The following terms shall have the meanings set forth herein:

“Abandonment” means (a) the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement, or (b) if after commencement of the construction of the Facility, and prior to the Commercial Operation Date, there is a complete cessation of the construction and testing of the Facility for 90 consecutive days by Seller and Seller’s contractors, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default of either Buyer, or by an event of Force Majeure.

“Additional Maintenance Outages” has the meaning assigned to it in Section 10.5 hereof.

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls or is controlled by or is under common control with such Person. For the purposes of this definition, “control” (including the terms “controls”, “under the control of”, “controlled by”, and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of such Person, whether through ownership interest, by contract or otherwise.

“Agreement” means this Power Purchase Agreement together with the Exhibit(s) and Schedule(s) attached hereto, as such may be amended from time to time.

“A.M. Best” means A.M. Best Company, Inc. and its affiliates.

“Applicable Law” means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority and all Non-Governmental Compliance Obligations, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

“Availability” for a period means, the ratio, expressed as a percentage, of (a) for the actual Solar Energy Output during such period over (b) the Expected Amount for such period.

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“Availability Cure” means the occurrence of an Availability Satisfactory Day after an Availability Unsatisfactory Day.

“Availability Day” means any Day after the date sixty (60) days following the Commercial Operation Date and before the end of the Term.

“Availability Default Period” means, with regard to an Availability Unsatisfactory Day, the period starting the day after such Availability Unsatisfactory Day and ending on the day that is sixty (60) Availability Days following the receipt by Seller of an Availability Underperformance Notice with regard to such Availability Unsatisfactory Day; provided that an Availability Day shall not be counted toward such sixty (60) Availability Days if it (i) falls within an Excused Maintenance Outage scheduled in accordance with Section 10.4(A) and, if changed in accordance with Section 10.4(C), changed before the Availability Unsatisfactory Day on which the start of such sixty (60) Availability Days is based, or (ii) consists entirely of Seller Uncontrollable Minutes.

“Availability LD Cure Period” means, with regard to an Availability Unsatisfactory Day, the period starting the day after such Availability Unsatisfactory Day and ending on the day that is thirty (30) Availability Days following the receipt by Seller of an Availability Underperformance Notice with regard to such Availability Unsatisfactory Day; provided that an Availability Day shall not be counted toward such thirty (30) Availability Days if it (i) falls within an Excused Maintenance Outage scheduled in accordance with Section 10.4(A) and, if changed in accordance with Section 10.4(C), changed before the Availability Unsatisfactory Day on which the start of such thirty (30) Availability Days is based, or (ii) consists entirely of Seller Uncontrollable Minutes.

“Availability Satisfactory Day” means an Availability Day on which the Availability of the Facility is at least [REDACTED] percent ([REDACTED]%) of the Expected Amount for such Availability Day.

“Availability Underperformance Notice” has the meaning ascribed in Section 8.3(B).

“Availability Unsatisfactory Day” means an Availability Day on which the Availability of the Facility is less than [REDACTED] percent ([REDACTED]%) of the Expected Amount for such Availability Day.

“Avoided Energy Cost” means Buyer’s avoided energy cost per MWh set in the Buyers’ Standard Rate Rider LQF or a successor provision of Buyers’ tariffs, expressed in Dollars.

“Business Day” means any calendar Day that is not a Saturday, a Sunday, or a NERC, state and/or federal recognized holiday where banks are permitted or authorized to close in Kentucky.

“Buyer” and “Buyers” is defined in the preamble of this Agreement, and includes such Person’s permitted successors and assigns.

“Buyer Entities” has the meaning ascribed to it in Section 17.1.

“Buyers’ Conditions Precedent” is defined in Section 6.2.

“Buyers’ Tier 1 CP” is defined in Section 6.2.

“Buyers’ Tier 1 CP Confirmation Notice” has the meaning ascribed to it in Section 6.3.

“Buyers’ Tier 3 CPs” is defined in Section 6.2.

“Buyers’ Tier 3 CP Confirmation Notice” has the meaning ascribed to it in Section 6.3.

“Capacity Rights” means any current or future defined characteristic, certificate, tag (but not Renewable Energy Benefits), credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy; provided, that Capacity Rights shall not include any ancillary services that Seller is expressly obligated to provide to the Interconnection Provider pursuant to the terms of the Interconnection Agreement. Capacity Rights do not include any Tax Credits, or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

“Change in Applicable Law” means the enactment, adoption, promulgation, implementation, or issuance of, or a new or changed interpretation of, any Applicable Law or Non-Governmental Compliance Obligation that takes effect after the Effective Date, including Applicable Laws regarding Renewable Energy Benefits, Taxes, and/or the generation and sale of electricity and/or Non-Governmental Compliance Obligations.

“Code” means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

“Commercial Operation” is defined in Section 4.2.

“Commercial Operation Date” means the date on which Commercial Operation is achieved.

“Commission Approvals” means such approvals from the PSC or the Virginia State Corporation Commission, as Buyers choose to pursue in their sole discretion, with respect to the performance of Buyers’ obligations and recovery of costs incurred hereunder, all without any requirement to modify the terms of this Agreement and without any conditions unacceptable to Buyer in its sole discretion.

“Commissioning” or “Commissioned” means, with respect to the Facility or any part thereof, the commencement of the period during which the Facility or a part thereof has begun Testing and ending when the Facility or part thereof has been approved

for the production of Solar Energy and authorized to commence delivery of Solar Energy Output, provided, however, that for certain tax and other corporate purposes, in accordance with Applicable Law, Commissioning shall be deemed to occur when any measurable amount of Solar Energy Output is first generated at the Facility and delivered and sold to Buyers consistent with the provisions of this PPA.

“Commissioning Tests” has the meaning assigned to it in Section 10.2.

“Confidential Information” has the meaning ascribed to it in Section 20.12(F).

“CP Confirmation Notice” means any notice defined in Section 6.3 and having “CP Confirmation Notice” as part of the term by which it is defined.

“Credit Event” shall mean, with regard to a Buyer: (x) if the credit rating then assigned to such Buyer’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) or other primary debt security is reduced to below an Investment Grade Rating by a Credit Rating Agency, or any Credit Rating Agency has suspended or withdrawn such unenhanced credit rating for credit-related reasons, (y) the rating assigned to a Buyer’s senior unsecured long-term debt obligations (not supported by third party credit enhancements) or, if the Buyer does not have a rating for its senior unsecured long-term debt, then the rating assigned to such Buyer by a Credit Rating Agency, is reduced to below an Investment Grade Rating; or (z) if such Buyer does not make payment to Seller when due more than once in any twelve (12) month period and such Buyer does not prepare a cure plan to insure compliance with the payment requirements under this PPA that is satisfactory to Seller within five (5) Days of such late payment.

“Credit Rating Agency” or “CRA” means a nationally recognized statistical rating organization (“NRSO”), which is a credit rating agency (“CRA”) that issues credit ratings that the United States Securities and Exchange Commission permits other financial firms to use for certain regulatory purposes. Among the 10 designated CRA’s by the NRSO, Buyers and Seller shall rely on ratings provided by one or more ratings issued by the Big Three credit rating agencies, Standard & Poor’s (S&P), Moody’s and Fitch Group, as it pertains to Letter(s) of Credit and A.M. Best as it pertains to Surety Bonds. If no such rating is provided by the aforementioned CRAs, Buyer and Seller shall find a CRA and/or do credit due diligence as mutually agreed upon by the Parties.

“Curtailed Energy” has the meaning ascribed to it in Section 8.2(A).

“Curtailed Renewable Energy Benefits” has the meaning ascribed to it in Section 8.2(A).

“Day” means a period beginning at 12:00 a.m. EST on any Day and ending at 11:59:59 p.m. EST on such Day.

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“Demonstrated Capacity” means the Facility’s actual net generating nameplate capacity rating, measured in MWac, as determined by the Commissioning Tests.

“Designated Network Resource” has the meaning assigned to it in the Interconnection Provider’s open access transmission tariff.

“Disclosing Party” has the meaning ascribed to it in Section 20.12(A).

“Disputing Party” has the meaning assigned to it in Section 9.5 hereof.

“Dollars” means the lawful currency of the United States of America.

“Early Termination Date” has the meaning ascribed to it in Section 12.4(A).

“Effective Date” means the date first written above.

“Electric Metering Device(s)” means all metering and data processing equipment used to measure, record, or transmit data relating to the Solar Energy Output generated by the Facility. Electric Metering Devices include the meter, the metering current transformers and the metering voltage transformers.

“Emergency Condition” means a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Interconnection Provider to cause a significant disruption to the Interconnection System or otherwise be required in accordance with the requirements of the NERC, SERC, or the Reliability Coordinator, or any system condition not consistent with Prudent Industry Practices.

“EPC Contract” means the engineering, procurement and construction contract(s) or other similar documents entered into by Seller in relation to the engineering, procurement and construction of the Facility.

“EST” means Eastern Standard Time.

“Event of Default” has the meaning set forth in Article 12.

“Excess Solar Energy” means any incremental Solar Energy Output beyond the Maximum Production Amount during any Year.

“Excess Solar Energy Payment Rate” means a rate equal to [REDACTED] percent ([REDACTED]%) of the Solar Energy Payment Rate.

“Excused Maintenance Outage” means: (1) Scheduled Maintenance Outages outside the Non Scheduled Maintenance Period; and (2) up to thirty (30) hours per calendar year of Scheduled Maintenance Outages during the Non-Scheduled Maintenance Period.

“Expected Amount” with respect to a period shall mean the quantity of Solar Energy Output expressed in MWh that would have been produced by the Facility during such period, except MWh that would have been produced by the Facility any portions of such period which are during Excused Maintenance Outages or Seller Uncontrollable Minutes, if the Facility operated at 100% of the Facility Capacity in MWac throughout such period, except any portions of such period which are during Excused Maintenance Outages or Seller Uncontrollable Minutes, using the Production Model.

“Facility” means Seller’s solar electric generating facility and Seller’s Interconnection Facilities, as identified and described in Article 3, including all of the following, the purpose of which is to produce electricity and deliver such electricity to the Point of Interconnection: Seller’s equipment, buildings, all of the generation facilities, including step-up transformers, output breakers, facilities necessary to connect to the Point of Interconnection, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Solar Energy Output subject to this PPA.

“Facility Capacity” means 100 MWac, which Facility Capacity may be adjusted pursuant to Section 3.3.

“FERC” means the Federal Energy Regulatory Commission or any successor agency.

“Financial Closing” means the fulfillment of each of the following conditions:

- (A) the execution and delivery of the Financing Documents; and
- (B) all conditions precedent to the initial availability for disbursement of funds under the Financing Documents (other than relating to the effectiveness of this PPA) are satisfied or waived.

“Financing Documents” means the loan and credit agreements, notes, bonds, indentures, sale-leaseback agreements, guarantees, security agreements, lease financing agreements, partnership and limited liability company operating agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt and/or equity financing (including the monetization of Tax Credits and accelerated depreciation by equity investment, issuance of cash in lieu of Tax Credits and/or sale-leaseback agreements) for the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller or its Affiliates in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

“Financing Parties” means the Persons (including any trustee or agent on behalf of such Persons) providing financing or refinancing to or on behalf of Seller or its

Affiliates, whether debt or equity, or a combination thereof, for the design, development, construction, Testing, Commissioning, operation and maintenance of the Facility (whether limited recourse, or with or without recourse).

“Fitch Group” means Fitch Ratings, Inc., Fitch Ratings, Ltd. and their affiliates or their successors.

“Force Majeure” has the meaning set forth in Section 14.1(A).

“Forced Outage” means a reduction of, or cessation in the delivery of, or inability to deliver, Solar Energy Output that is not the result of (i) a Scheduled Maintenance Outage, (ii) a Force Majeure event, (iii) a Seller Delivery Excuse, (iv) an Emergency Condition, or (v) changes in weather and ambient conditions.

“Governmental Approval” means any authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Governmental Authority, including: (i) with regard to Seller, relating to the construction, development, ownership, occupation, start-up, Testing, operation or maintenance of the Facility, or (ii) with regard to each Buyer, the execution, delivery or performance of this PPA or the procurement pursuant to this PPA of the Solar Energy Output and the Renewable Energy Benefits and recovery of the related costs. Governmental Approval shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation with regard to any Non-Governmental Compliance Obligations.

“Governmental Authority” means any federal, state, local or municipal governmental body; any 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; or any court or governmental tribunal.

“House Energy” has the meaning assigned to it in Section 1.3.

“Indemnified Party” means the Buyer Entities entitled to indemnification by Seller under Section 17.1(B), or the Seller Entities entitled to indemnification under Section 17.1(C), as appropriate.

“Independent Transmission Organization” or “ITO” means an entity authorized by FERC to administer Buyers’ open access transmission tariff.

“Interconnection Agreement” means the separate agreement between Seller and the Interconnection Provider for interconnection of the Facility to the Interconnection Provider’s System, as such agreement may be amended from time to time; provided, however, that a provisional interconnection agreement executed prior to the completion of all system impact and facility studies shall not be considered to be an Interconnection Agreement.

“Interconnection Facilities” means Interconnection Provider’s Interconnection Facilities and Seller’s Interconnection Facilities.

“Interconnection Provider” means the entity that owns, leases, or otherwise controls the electric transmission facilities to which Seller proposes to interconnect.

“Interconnection Provider’s Interconnection Facilities” means the facilities and equipment installed by the Interconnection Provider after the Point of Interconnection for the direct purpose of interconnecting the Facility with the Interconnection Provider’s System. Arrangements for the installation and operation of the Interconnection Provider’s Interconnection Facilities shall be governed by the Interconnection Agreement.

“Interconnection Provider’s System” means the contiguously interconnected electric transmission, including Interconnection Provider’s Interconnection Facilities, over which the Interconnection Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Point of Interconnection.

“Interim Interconnection Service” means Interconnection Service that allows the Interconnection Customer to connect its Generating Facility to the Interconnection Provider’s system and be eligible to deliver the Generating Facility’s electric output on a temporary basis while the Interconnection Customer’s Generator Interconnection Request is being processed through the LGIP.

“Interim LGIA” means the agreement that governs the provision of Interim Interconnection Service, to include a Provisional LGIA or an Interim LGIA, as defined by the Interconnection Provider’s open access transmission tariff.

“Investment Grade Rating” means as the rating designated by one of the Credit Rating Agencies with a minimum long term issuer rating (\geq):

- As it pertains to Letter(s) of Credit:
 - BBB- from S&P; or
 - Baa3 from Moody’s; or
 - BBB- from Fitch Group;
- As it pertains to Surety Bonds:
 - bbb- from A.M. Best;
- As it relates to a Buyer, a minimum investment grade rating defined as:
 - BBB- from S&P; or
 - Baa3 from Moody’s; or
 - BBB- from Fitch Group;

“KU Percentage” means 61%.

“kW” means one or more kilowatts of electricity, as the context requires.

“Large Generator Interconnection Agreement” (LGIA) shall mean the form of interconnection agreement applicable to an Generator Interconnection Request

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pertaining to a Large Generating Facility that is included in the Interconnection Provider's tariff.

"Large Generator Interconnection Procedures" (LGIP) shall mean the interconnection procedures applicable to an Generator Interconnection Request pertaining to a Large Generating Facility that are included in the Interconnection Provider's tariff.

"LD Avoided Cost Input" means with respect to an Availability Day the greater of (i) zero or (ii) the amount that results from subtracting the Solar Energy Payment Rate from Avoided Energy Cost as of such Availability Day.

"LD Monetary Factor" has the meaning set forth in Section 8.3(C).

"LD REC Input" means with respect to an Availability Day the lowest available offer or ask price of a green-e certified REC in Kentucky and its adjoining states and such other states, if any, which Buyers agree in writing to include for such purpose, as of such Availability Day.

"LG&E Percentage" means 39%.

"Local Provider" has the meaning assigned to it in Section 1.3.

"Maximum Production Amount" means a production amount of [REDACTED] MWh during a Year.

"Minimum Demonstrated Capacity" means [REDACTED] MWac.

"Monthly Billing Period" means the period during any particular calendar month in which either Test Energy and/or Solar Energy Output has been generated by Seller for Buyers and delivered to the Point of Interconnection for sale to Buyers, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"Moody's" means Moody's Investors Service, Inc. Moody's Analytics, Inc. and their affiliates.

"Month" means a calendar month.

"MW" means megawatt or one thousand kW.

"MWac" means megawatt alternating current.

"MWh" means megawatt hours.

"NERC" means the North American Electric Reliability Council or any successor organization.

"Non-Governmental Compliance Obligations" means all obligations to comply with existing national and regional reliability standards and rules and regulations

related to transmission system reliability and set by entities that are not Governmental Authorities, including standards set by NERC, Seller's ITO, and any RE and any successor agencies.

"Non-Scheduled Maintenance Period" has the meaning assigned to it in Section 10.4(A).

"O&M Records" has the meaning assigned to it in Section 13.2(A).

"Party" and "Parties" have the meanings set forth in the preamble above.

"Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

"Point of Interconnection" means the electric system point at which Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided by Seller to Buyer under this PPA. The Point of Interconnection is also the physical point at which electrical interconnection is made between the Facility and the Interconnection Provider's System.

"PPA" means this Agreement.

"Prime Rate" shall mean the prime rate (or base rate) reported in the Money Rates column or section of The Wall Street Journal as being the base rate on corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) on the first day on which The Wall Street Journal is published in the month in which the subject sums are payable or incurred.

"Production Model" means an as-built energy model prepared by the Seller's construction lender's independent engineer, which model shall include the variables and use the methodology set forth on Exhibit D, and such other variables as such independent engineer determines should be included, and such other adjustments as the Parties may mutually determine.

"Projected Schedule" has the meaning assigned to it in Section 7.2(A).

"Provisional Generator Interconnection Agreement" means the interconnection agreement for Provisional Interconnection Service established between Interconnection Provider's and the Interconnection Customer. This agreement shall take the form of the Large Generator Interconnection Agreement, modified for provisional purposes.

"Prudent Industry Practice(s)" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by operators of utility electric generation stations of a type and size similar to those constituting the Facility, which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could

have been expected to accomplish the desired result at a reasonable cost, consistent with good, safe, and prudent engineering practices in connection with the operation, maintenance, repair, and use of equipment and facilities and commensurate standards of safety, performance, dependability, efficiency, and economy that conform to all material operation and maintenance standards recommended by the Facility's equipment suppliers and manufacturers and Applicable Law. Prudent Industry Practices are not intended to be limited to the optimum practice or method to the exclusion of others, but rather to be a spectrum of possible but reasonable practices and methods.

"PSC" means the Kentucky Public Service Commission and any successor entity thereto.

"Receiving Party" has the meaning ascribed to it in Section 20.12(A).

"Receiving Party's Representatives" has the meaning assigned to it in Section 20.12(B).

"Reliability Coordinator" means the entity that is the highest level of authority responsible for the reliable operation of the transmission system, has the wide area view of the transmission system, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations.

"Renewable Energy Benefits" means any and all renewable and environmental attributes, emissions reductions, credits, offsets, allowances reporting rights and benefits, howsoever entitled, associated with the production of the Solar Energy Output, and includes any and all Renewable Energy Certificates and Renewable Energy Benefits Reporting Rights. Renewable Energy Benefits exclude and do not include any Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

"Renewable Energy Benefits Reporting Rights" means the exclusive right of a purchaser of Renewable Energy Benefits to report exclusive ownership of Renewable Energy Benefits in compliance with federal or state Law, if applicable, and to federal or state agencies or other parties at such purchaser's discretion, and include reporting under Section 1605(b) of the Energy Policy Act of 1992, under regulations of the Environmental Protection Agency under Clean Air Act Amendments Section 111(d), and under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

"Renewable Energy Certificate" or "REC" means a unit that represents all of the non-power attributes from one MWh of electricity generation from a renewable generating unit including the property rights to the environmental, social and other non-power attributes of a renewable electricity generation portfolio energy system or efficiency measure that the Facility is entitled to receive pursuant to Applicable Law, including the Renewable Energy Law.

“Renewable Energy Law” means an act of the Kentucky Legislature, if any, relating to energy and requiring certain providers of electric service to comply with the portfolio standard for renewable energy, and providing for other matters relating thereto, in each case as such Laws, regulations, guidance and requirements may be amended, preempted or superseded.

“Required Commercial Operation Date” means December 31, 2021, subject to adjustment as described in Section 4.1.

“Restoration” has the meaning assigned to it in Section 14.5(B).

“Restoration Report” has the meaning assigned to it in Section 14.7.

“Restoration Schedule” has the meaning assigned to it in Section 14.5(B).

“RE” means any regional entity with jurisdiction over Seller as a generator of electricity and operator of the Facility.

“SCC” means system control center, the Buyers’ representative(s) responsible for dispatch of generating units and scheduling energy and capacity from the Facility.

“Scheduled Maintenance Outage” means a time during which the Facility is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Buyers.

“Seller’s Conditions Precedent” is defined in Section 6.1.

“Seller’s Interconnection Facilities” means the equipment between the single collection point for the A/C wiring from the output of the project inverters and the Point of Interconnection as well as all transmission facilities required to access the Interconnection Provider’s System at the Point of Interconnection, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, it includes Seller’s relays, and load control equipment as provided for in the Interconnection Agreement.

“Seller’s Tier 1 CPs” is defined in Section 6.1.

“Seller’s Tier 2 CP” is defined in Section 6.1.

“Seller’s Tier 3 CPs” is defined in Section 6.1.

“Seller’s Tier 4 CP” is defined in Section 6.1.

“Seller’s Tier 1 CP Confirmation Notice” has the meaning ascribed to it in Section 6.3.

“Seller’s Tier 2 CP Confirmation Notice” has the meaning ascribed to it in Section 6.3.

“Seller’s Tier 3 CP Confirmation Notice” has the meaning ascribed to it in Section 6.3.

“Seller’s Tier 4 CP Confirmation Notice” has the meaning ascribed to it in Section 6.3.

“Seller Credit Support” has the meaning ascribed to it in Section 11.1.

“Seller Delivery Excuse” shall mean: (i) any breach by a Buyer of its obligations under the PPA, (ii) any delay or failure by a Buyer in giving any approval such Buyer is required to give under this PPA by the time by which such Buyer required is required to give such approval under this PPA, or (iii) any delay or failure of a Buyer to accept Solar Energy Output or Renewable Energy Benefits as required under this PPA (1) because of any failure of such Buyer to obtain or maintain adequate transmission arrangements, or (2) because of any failure of such Buyer to comply with Applicable Law; in each case, to the extent that any of the foregoing actually and proximately prevents the Seller, in whole or in part, from performing any of its obligations or satisfying any conditions under this PPA.

“Seller Entities” has the meaning ascribed to it in Section 17.1.

“Seller Uncontrollable Minutes” means a reduction of, or cessation in the delivery of, or inability to deliver, Solar Energy Output that would not occur but for one or more of (i) a Force Majeure event, (ii) a Seller Delivery Excuse, (iii) an Emergency Condition, or (iv) to the extent not caused by Seller’s actions, any curtailment of the Facility by a Buyer, an ITO, the Interconnection Provider or any other Person or the Interconnection Provider; provided, however, that if any of the events described above in items (i) through (iv) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting. Seller Uncontrollable Minutes shall not include minutes when (i) the Facility or any portion thereof was unavailable solely due to Seller’s non-conformance with the Interconnection Agreement or (ii) the Facility or any portion thereof was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

“SERC” means SERC Reliability Corporation or any successor entity.

“Site” means the parcel of real property on which the Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility.

“Solar Energy” means the electric energy generated by the Facility using solar electric generation technologies.

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“Solar Energy Output” means the net unit contingent electric energy generated in MWh using solar electric generation technologies delivered at nominal voltage to the Point of Interconnection as measured by the Electric Metering Devices installed pursuant to Section 5.3. Solar Energy Output shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

“Solar Energy Payment” has the meaning assigned to it in Section 8.1(A).

“Solar Energy Payment Rate” means \$27.82/MWh.

“Standard and Poor’s” or “S&P” means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc. and any successor entity thereto.

“Surety Bond” means a bond that is issued by a surety or insurance company that promises to pay a specified amount to Buyers upon certain events, which include, but are not limited to, when the Seller fails to perform a payment obligation under this Agreement and which the surety or insurance company so issuing shall (i) be authorized to issue surety bonds in the Commonwealth of Kentucky, (ii) have assets of at least [REDACTED] and (iii) have an Investment Grade Rating as defined in this Agreement.

“Tax Credits” means investment tax credits under Section 48 of the Code as in effect on the date of this PPA, and any successor or other provision providing for a federal, state or local tax credit, cash grant, tax exemption, depreciation, tax attribute or benefit or similar program determined by reference to ownership of renewable energy production facilities, renewable electric energy produced from Solar Energy or amounts invested in renewable energy generating facilities.

“Taxes” means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth.

“Term” means the period during which this PPA shall remain in full force and effect, and which is further defined in Article 2.

“Test” or “Testing” means those tests, evaluations and measurements of the Facility’s output capability that are undertaken in connection with the Commissioning of the Facility pursuant to Section 10.2 of this PPA, which shall include such tests as are consistent with Prudent Industry Practices and that are required by the Financing Documents, applicable permits, and the EPC Contract.

“Test Date” means the date on which Seller shall commence Commissioning of the Facility.

“Test Energy” means the Solar Energy Output that is generated by the Facility, delivered to Buyers at the Point of Interconnection, and purchased by Buyers, pursuant to Section 10.2(C) and Section 4.3.

“Test Period Transmission Service” means transmission service which would allow energy to flow from the Point of Interconnection to the Buyers’ load.

6.3. “Tier 1 CP Termination Notice” has the meaning ascribed to it in Section

6.3. “Tier 2 CP Termination Notice” has the meaning ascribed to it in Section

6.3. “Tier 3 CP Termination Notice” has the meaning ascribed to it in Section

6.3. “Tier 4 CP Termination Notice” has the meaning ascribed to it in Section

“Year” means a calendar year.

ARTICLE 2

Term and Termination

This PPA shall become effective as of the Effective Date and shall remain in full force and effect until the twenty (20) year anniversary of the Commercial Operation Date, subject to early termination or any extension provisions set forth herein. Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for: final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this PPA, repayment of principal and interest associated with security funds, and the indemnifications specified in this PPA. The Term of this PPA may be extended only upon the written agreement of Seller and Buyers.

ARTICLE 3

Facility Description

3.1 Summary Description. Subject to the satisfaction or waiver of the Seller’s CPs, Seller shall construct, own, operate, and maintain the Facility and associated equipment having an aggregate maximum power output of the Facility Capacity.

3.2 General Design of the Facility. Seller shall construct the Facility in accordance with Prudent Industry Practice(s) and in compliance with the terms and conditions of the Interconnection Agreement, Applicable Law, and applicable Permits. During Commercial Operation, Seller shall maintain the Facility according to Prudent Industry Practice(s) and the Interconnection Agreement. In addition to the requirements of the Interconnection Agreement, the Facility shall at all times:

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- (A) have the required panel space to accommodate metering, generator telemetering equipment and communications equipment;
- (B) have remote monitoring facilities; and
- (C) have no fewer than four (4) suitable solar radiation meters necessary to characterize the solar resource and site ambient conditions, including plane of array irradiance (POAI), global horizontal irradiance (GHI), temperature, pressure and humidity.

3.3 Facility Capacity Adjustment.

(A) If Seller has executed an Interim LGIA prior to the start of construction of the Facility, Seller may, during its use of Interim Interconnection Service, decrease the Facility Capacity to the amount permitted to be interconnected pursuant to such Interim LGIA by providing Buyers with written notice of such adjustment. In such event, the Facility Capacity shall, during Seller's use of Interim Interconnection Service, be no less than [REDACTED] percent ([REDACTED]%) of the amount allowed under the Interim LGIA. Seller shall thereafter be entitled to increase the Facility Capacity up to the amount that Seller is authorized to interconnect pursuant to an LGIA to be executed by Seller (but not to exceed 100 MWac).

(B) Unless decreased as set forth in this Section 3.3(B), the Facility Capacity following the Commercial Operation Date, except during Interim Interconnection Service, shall be 100 MWac. Prior to Seller's notice to its EPC contractor to commence construction, Seller may, on one occasion only, decrease the Facility Capacity by providing Buyer with written notice of such adjustment; provided, however, that Seller may not decrease the Facility Capacity to below the Minimum Demonstrated Capacity without Buyer's prior written consent, which Buyer may withhold in its sole discretion.

ARTICLE 4 Commercial Operation

4.1 Completion by Required Completion Date.

(A) Seller shall cause the Facility to achieve the Commercial Operation Date no later than the Required Commercial Operation Date; provided, that Seller shall not be obligated to establish a Commercial Operation Date under this PPA that is earlier than the Required Commercial Operation Date.

(B) The Required Commercial Operation Date shall be extended, day-for-day, for (i) each day during which a Force Majeure event has occurred and is continuing (but not more than a maximum of 180 Days for all events of Force Majeure in the aggregate); (ii) each Day after a date on or before which Section 6.2 states that a Buyers' Conditions Precedent should occur and before the date that Buyers deliver Buyers' CP Confirmation Notice with respect to such Buyers' Conditions Precedent; and (iii) each Day after a date on or before which Section 6.1 states that a Seller's Conditions Precedent should occur and before the date that Seller has delivered Seller's CP

Confirmation Notice with respect to such Seller's Conditions Precedent (but not more than a maximum of ninety (90) days in the aggregate); provided that a Day meeting more than one of the above three (3) descriptions shall still be counted as just one Day for purposes of such extension.

4.2 Commercial Operation.

"Commercial Operation" means that:

(A) Commissioning has been completed and the Demonstrated Capacity has been determined by the Tests to be at least the Minimum Demonstrated Capacity of Solar Energy at the Point of Interconnection, as adjusted for the level of solar irradiation and ambient conditions at the time of the Commissioning Test;

(B) the Facility is fully operational and reliable and the Facility is fully interconnected, fully integrated, and synchronized with the Interconnection Provider's System, and is able to generate electric energy reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof, evidence of which shall be Seller's responsibility to receive or obtain and deliver to Buyers;

(C) Buyers shall have received a certificate addressed to Buyers from a senior officer of Seller familiar with the Facility, attaching documentation and/or certifications from a registered professional engineer familiar with the Facility, stating:

- (i) the conditions in clauses "(A)" and "(B)" above have been satisfied, and
- (ii) all required Interconnection Facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with the Interconnection Provider's System in conformance with the Interconnection Agreement and able to deliver energy consistent with the terms of this Agreement.

(D) Seller shall have demonstrated to Buyers' reasonable satisfaction that it can reliably transmit real time data and measurements from solar radiation meters to Buyers.

(E) Seller shall have furnished the Seller Credit Support.

(F) Seller shall have furnished certificates of insurance evidencing the coverages required by Article 16 have been obtained and submitted to Purchaser.

4.3 Test Energy. If Seller obtains Test Period Transmission Service, Seller shall coordinate the production and delivery of Test Energy with Buyers, including providing Buyers with prior notice of delivery as Buyers may reasonably request. Buyers shall cooperate with Seller to facilitate Testing of the Facility. If Seller obtains Test Period Transmission Service, Buyers shall accept delivery of Test Energy, provided that the

Facility is installed and interconnected in accordance with the Interconnection Agreement, and Buyers shall purchase such Test Energy delivered to the Point of Interconnection and beyond in accordance with Test Period Transmission Service at the Solar Energy Payment Rate.

ARTICLE 5 Delivery and Metering

5.1 Delivery Arrangements. Seller shall be responsible for all interconnection and transmission arrangements and costs required to deliver the Solar Energy Output and Test Energy from the Facility to Buyers at the Point of Interconnection at the required voltage. Buyers shall be responsible for all transmission arrangements and costs or charges, if any, imposed in connection with the delivery of Solar Energy Output at and from the Point of Interconnection, including transmission costs, transmission line losses, ancillary service arrangements and costs, control area or generator imbalance services, imbalance charges and associated penalties. Seller shall bear no responsibility related to delivery past the Point of Interconnection or any ancillary, control area or generator imbalance services required pursuant to Buyers' open access transmission tariff or any other transmission utility, regional transmission organization, NERC, the RE or any other entity. Seller shall diligently negotiate an Interconnection Agreement with the Interconnection Provider and post and maintain any and all security for payment and performance, if, when and for so long as required under the Interconnection Agreement.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and timely updates on the current availability of the Facility to Buyers' SCC. Seller shall notify the SCC by telephone call (with confirmation in each case to follow by written notice or other form of documentation as agreed upon by both Parties) immediately upon discovering that the Facility is unable to deliver all or part of any scheduled quantity of Solar Energy Output due to a Forced Outage and, as soon as reasonably practicable following such discovery, shall notify the SCC in writing of its best estimate of the expected duration of such Forced Outage. Such estimate by Seller shall be based on the best information available to it. Should Seller expect any further changes in the duration of any such Forced Outage, it shall promptly notify the SCC of the same.

5.3 Electric Metering Devices. With respect to this Section 5.3, and notwithstanding the general applicability of the interpretive provisions of Section 1.2(B), the metering provisions of the Interconnection Agreement (including Article 7 thereof) are incorporated herein by reference and Buyers agree that Seller shall retain all of its rights thereunder without regard to any separateness of Buyers and the Interconnection Provider. Accordingly, electric metering shall be in compliance with the Interconnection Agreement. Seller will grant Buyers access to all metering data and other meter information, including testing, on same basis as available to Seller.

5.4 Interconnection Information. To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyers to contact and obtain information concerning the Facility and Interconnection Facilities

directly from the Interconnection Provider and, to the extent necessary, Seller shall provide written notice to the Interconnection Provider confirming such authorization.

ARTICLE 6 Conditions Precedent

6.1 Seller's Condition Precedent. This Section 6.1 describes certain conditions precedent to Seller's obligations under this PPA (collectively, the "Seller's Conditions Precedent"), each of which Seller shall pursue diligently with commercially reasonable efforts:

(A) Seller's obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence of each of Seller's Conditions Precedent described in this Section 6.1(A) (collectively the "Seller's Tier 1 CPs") on or before March 31, 2020:

- (i) Seller shall have executed such easements, rights-of-way and other real estate contracts as may be necessary for the transmission line from the solar project to and including the Point of Interconnection;
- (ii) Seller shall have received a Phase I environmental site assessment for the Site that is reasonably satisfactory to Seller;
- (iii) Seller shall have received a preliminary title report with regard to the Site that does not include any third party encumbrances unacceptable to Seller;
- (iv) Seller shall have received a private letter ruling or other assurances from the Kentucky Department of Revenue that it will use a cost approach, which is the net book value of the hard assets plus the fair market value of leased real and tangible property plus or minus cash working capital, to value the Facility during its expected life; and
- (v) the Buyers' Tier 1 CP shall have been satisfied without any requirement to modify the terms of this Agreement and without any conditions unacceptable to Seller.

(B) Seller's obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence of Seller's Condition Precedent described in this Section 6.1(B) ("Seller's Tier 2 CP") on or before June 30, 2020:

- (i) Seller shall have received all siting, zoning, planning commission, conditional use or other discretionary permits and other Governmental Approvals necessary for the construction and operation of the Facility, and such permits

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and Governmental Approvals have become final and non-appealable.

(C) Seller's obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence of each of Seller's Conditions Precedent described in this Section 6.1(C) (collectively the "Seller's Tier 3 CPs") on or before December 31, 2020; provided, however, that if the Seller's Tier 2 Confirmation Notice is issued after June 30, 2020, then, without affecting any termination right of either Party with respect to a delay in Seller's Tier 2 Confirmation Notice, the date by which Seller must satisfy Seller's Tier 3 CPs in Section 6.1(C)(i) shall be extended on a day-for-day basis, with such extended date treated for purposes of Section 4.1(B) as the date on or before which this Section 6.1 states that Seller's Tier 2 CP should occur:

- (i) Seller shall have received approval for the Facility under the Kentucky Public Service Commission Electric Generation and Transmission Siting Board Energy, and such approval shall be final and non-appealable;
- (ii) Seller shall have received a report from Buyers' ITO confirming that the aggregate non-refundable or non-creditable cost to Seller for interconnection, network, affected system and other upgrades is reasonably expected not to exceed [REDACTED];
- (iii) Seller shall have received a report from Burns & McDonnell or such other engineering firm engaged by Seller confirming that the aggregate non-refundable or non-creditable cost to Seller for interconnection, network, affected system and other upgrades is reasonably expected not to exceed [REDACTED];
- (iv) Buyers shall provide Seller written affirmation that: (A) Buyers have achieved Network Resource designation for the generating facility and has obtained appropriate Network Integration Transmission Service for the generating facility; and
- (v) Seller shall have executed (i) a LGIA that allows for a Facility Capacity of at least [REDACTED] MWac and provides for a construction schedule that will allow the Seller to achieve the Required Commercial Operation Date or (ii) an Interim LGIA consistent with Section 3.3(B).

(D) Seller's obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence of Seller's Condition Precedent described in this Section 6.1(D) (the "Seller's Tier 4 CP") on or before March 31, 2021:

- (i) Financial Closing has occurred.

6.2 Buyers' Condition Precedent. This Section 6.2 describes certain conditions precedent to Buyers' obligations under this PPA (collectively, the "Buyers' Conditions Precedent"), each of which Buyer shall pursue diligently with commercially reasonable efforts:

(A) Buyers obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence of the Buyers' Condition Precedent described in this Section 6.2(A) (the "Buyers' Tier 1 CP") on or before March 31, 2020:

- (i) Buyers shall have received all permits and approvals, and shall have satisfied all other requirements under Applicable Law, including the Commission Approvals.

(B) Buyers obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence of each of the Buyers' Conditions Precedent described in this Section 6.2(B) (collectively, the "Buyers' Tier 3 CPs") on or before December 31, 2020:

- (i) Interconnection Provider shall have qualified the Facility as a Designated Network Resource and Buyers are capable of scheduling the entire Facility Capacity as a Designated Network Resource; and
- (ii) Buyers shall have secured unconditional firm network transmission service from the Point of Interconnection to Buyer's load for the Term.

6.3 Failure of Condition Precedent.

(A) Tier 1 CPs. The Tier 1 Seller's CPs and Tier 1 Buyers' CP (collectively the "Tier 1 CPs") shall be deemed satisfied upon (i) delivery by Seller to Buyers of a written notice stating that Seller has achieved or waived all Tier 1 Seller's CPs and that Seller does not object to any conditions of the approvals on which the Tier 1 Buyers' CP is based (the "Seller's Tier 1 CP Confirmation Notice"); and (ii) delivery by Buyers to Seller of a written notice stating that Buyers have achieved or waived all Tier 1 Buyers' CPs and that Buyer does not object to any conditions of the approvals on which the Tier 1 Buyers' CP is based (the "Buyers' Tier 1 CP Confirmation Notice"). If the Seller's Tier 1 CP Confirmation Notice and/or the Buyers' Tier 1 CP Confirmation Notice are not delivered by March 31, 2020, either Party may deliver a termination notice to the other Party (a "Tier 1 CP Termination Notice") with such termination effective on the date sixty (60) days following such Tier 1 CP Termination Notice unless the Party that did not deliver the CP Confirmation Notice that is the subject of such Tier 1 CP Termination Notice by March 31, 2020 delivers such CP Confirmation Notice before the end of such sixty (60) day period, in which case the Tier 1 CP Termination Notice shall be automatically rescinded and this Agreement shall continue in full force and effect. Either Party may provide a Tier 1 CP Termination Notice with immediate effect at any time prior

March 31, 2020 if it reasonably determines that such Party's Tier 1 CPs will not be achieved by March 31, 2020.

(B) Tier 2 CPs. The Tier 2 Seller's CP shall be deemed satisfied upon delivery by Seller to Buyers of a written notice stating that Seller has achieved or waived all Tier 2 Seller's CPs (the "Seller's Tier 2 CP Confirmation Notice"). If the Seller's Tier 2 CP Confirmation Notice is not delivered by June 30, 2020, either Party deliver a termination notice to the other Party (a "Tier 2 CP Termination Notice") with such termination effective on the date sixty (60) days following such Tier 2 CP Termination Notice unless, before the expiration of such sixty (60) day period, Seller delivers the Seller's Tier 2 CP Confirmation Notice, in which case the Tier 2 CP Termination Notice shall be automatically rescinded and this Agreement shall continue in full force and effect. Seller may provide a Tier 2 CP Termination Notice with immediate effect at any time prior June 30, 2020 if it reasonably determines that any Tier 2 Seller's CPs will not be achieved by June 30, 2020.

(C) Tier 3 CPs. The Tier 3 Seller's CPs and Tier 3 Buyers' CPs (collectively the "Tier 3 CPs") shall be deemed satisfied upon (i) delivery by Seller to Buyers of a written notice stating that Seller has achieved or waived all Tier 3 Seller's CPs (the "Seller's Tier 3 CP Confirmation Notice") and (ii) delivery by Buyers to Seller of a written notice stating that Buyers have achieved or waived all Tier 3 Buyers' CPs (the "Buyers Tier 3 CP Confirmation Notice"). Subject to any extension as described in Section 6.1(C), if the Seller's Tier 3 CP Confirmation Notice and/or the Buyers' Tier 3 CP Confirmation Notice are not delivered by December 31, 2020, either Party may deliver a termination notice to the other Party (a "Tier 3 CP Termination Notice") with such termination effective on the date sixty (60) days following such Tier 3 CP Termination notice unless the Party that did not deliver the CP Confirmation Notice that is the subject of such Tier 3 CP Termination Notice by December 31, 2020 delivers such CP Confirmation Notice before the end of such sixty (60) day period, in which case the Tier 3 CP Termination Notice shall be automatically rescinded and this Agreement shall continue in full force and effect. Either Party may provide a Tier 3 CP Termination Notice with immediate effect at any time prior December 31, 2020 if it reasonably determines that such Party's Tier 3 CPs will not be achieved by December 31, 2020.

(D) Tier 4 CPs. The Tier 4 Seller's CP shall be deemed satisfied upon delivery by Seller to Buyers of a written notice stating that Seller has achieved or waived all Tier 4 Seller's CPs (the "Seller's Tier 4 CP Confirmation Notice"). If the Seller's Tier 4 CP Confirmation Notice is not delivered by March 31, 2021, either Party may deliver a termination notice to the other Party (a "Tier 4 CP Termination Notice") with such termination effective on the date sixty (60) days following such Tier 4 CP Termination notice unless, before the expiration of such sixty (60) day period, Seller delivers the Seller's Tier 4 CP Confirmation Notice, in which case the Tier 4 CP Termination Notice shall be automatically rescinded and this Agreement shall continue in full force and effect. Seller may provide a Tier 4 CP Termination Notice with immediate effect at any time prior December 31, 2021 if it reasonably determines that any Tier 4 Seller's CPs will not be achieved by December 31, 2021.

(E) Upon the effectiveness of any termination as provided in this Section 6.3, this Agreement shall terminate without any liability for any Party.

ARTICLE 7

Sale and Purchase of Solar Energy Output and Renewable Energy Benefits

7.1 Sale and Purchase of Solar Energy Output and Capacity.

(A) Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Interconnection, and sell to Buyers all the Solar Energy Output not exceeding the Facility Capacity and all of the Renewable Energy Benefits produced by the Facility in connection with such Solar Energy Output, LG&E shall purchase the LG&E Percentage of such Solar Energy Output and Renewable Energy Benefits, and KU shall purchase the KU Percentage of such Solar Energy Output and Renewable Energy Benefits, all as provided in Section 8.1.

(B) As between Seller and Buyers, Seller shall be in control of the Solar Energy Output and Test Energy from the Facility up to and until delivery and receipt at the Point of Interconnection and Buyers shall be in control of such energy from and after delivery and receipt at the Point of Interconnection. Title and risk of loss related to the Solar Energy Output and Test Energy shall transfer from Seller to Buyers at the Point of Interconnection.

(C) Ownership by Buyers of Renewable Energy Benefits as set forth in Section 7.1(A) shall be for the entire Term of this PPA, including any Renewable Energy Benefits that are reserved or “banked” throughout the Term of this PPA, but not used, sold, assigned or otherwise transferred during the Term of this PPA. Each Buyer may, to the extent permitted by Applicable Law and this PPA, assign its rights, title and interest in and to any Renewable Energy Benefits obtained under Section 7.1(A) (but not any payment obligation) to one or more third parties under any transaction permitted by Applicable Law. Any financial or other compensation received by Buyers from the disposition of Renewable Energy Benefits Reporting Rights held by Buyers as set forth in Section 7.1(A) shall inure solely to the benefit of Buyers.

(D) Tax Credits in effect on the date of this PPA or arising hereafter shall be accrue solely to the benefit of Seller.

(E) Seller and Buyers shall execute all documents and instruments necessary to effect the transfer of the Renewable Energy Benefits to Buyers or their respective designees, including those required for compliance with all Applicable Laws, including a Renewable Energy Law, if enacted, and all rules and regulations established by any Person for the issuance and tracking of RECs, and the PSC. Without limiting the generality of the foregoing, Seller shall, within a reasonable time after the effective date of any Renewable Energy Law, obtain for the Facility such designation as is required under such Renewable Energy Law for the transfer of the Renewable Energy Benefits to

Buyers or their respective designees in accordance with such Renewable Energy Law; provided that Seller shall not be required to incur costs in obtaining such designation to the extent such costs are materially greater than the costs of obtaining a comparable designation under Renewable Energy Laws in other states in general.

(F) Subject to Section 7.1(G), from time to time, the Buyers may, by 30 days' written notice to Seller, change the LG&E Percentage and KU Percentage, subject to the following conditions:

- (1) the sum of the LG&E Percentage and the KU Percentage following such change shall be equal to one hundred percent (100 %);
- (2) the Buyer for which the percentage will increase is not subject to a Credit Event; and
- (3) the Buyers have obtained any and all Governmental Approvals required for such change.

(G) A change requested under Section 7.1(F) that satisfies the conditions stated in Section 7.1(F) shall become effective on the first Day of the Month following the month in which the thirtieth (30th) Day following Buyers' notice falls, at which time this PPA shall be deemed amended with respect to the LG&E Percentage and KU Percentage.

7.2 Scheduling.

(A) Scheduling shall be on a "must-take" basis, except to the extent that the Solar Energy Output of the Facility is reduced as a result of Forced Outages, Scheduled Maintenance Outages, Additional Maintenance Outages, Force Majeure events and Emergency Conditions. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyers with a good faith estimate of the quantity of Solar Energy Output that it expects to generate for the remainder of that Year and the following Year if Commercial Operation Date is after October 1 in the Year that the Commercial Operation Date is achieved. By October 1 of each succeeding Year, Seller shall provide Buyers with a good faith estimate of the hourly quantities of Solar Energy Output that Seller expects to generate in the following Year (the "Projected Schedule").

(B) Seller shall provide to Buyers its good faith, non-binding estimates of the daily quantity (by hour) of Solar Energy Output to be delivered by Seller to the Point of Interconnection for the following three (3) Month period by 4:00 p.m. EST on the date falling at least three (3) Days prior to the beginning of that Month.

(C) If, at any time following submission of a good faith estimate as described in Section 7.2(B), Seller becomes aware of any change that materially alters the values previously provided to Buyers, Seller shall promptly notify Buyers of such change or predicted change.

7.3 No Sale to Third Parties. Except as provided in Section 8.2, all of the Solar Energy Output and Renewable Energy Benefits shall be dedicated exclusively to Buyers for so long as this Agreement is in force and effect. Seller shall not (a) sell, divert, grant, transfer or assign any Solar Energy Output, Renewable Energy Benefits, or Capacity Rights to any Person other than Buyer, (b) provide Buyer with any such items from any source other than the Facility or (c) divert, redirect or make available the Facility or any resource therefrom to another generating facility or any third party. The Parties agree that remedies at Law may be inadequate in the event of a breach of this Section 7.3, and Seller agrees that Buyer shall be entitled to seek without proof of actual damages, temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining Seller from committing or continuing any breach of this Section 7.3.

ARTICLE 8 Payment Calculations

8.1 Payments to Seller.

(A) Except as otherwise provided in this PPA, each Buyer shall pay Seller a monthly payment due and payable in each Monthly Billing Period in accordance with the invoicing procedures set forth in Section 9.1 equal to the following amount (the "Solar Energy Payment"): the sum, over all hours of the Monthly Billing Period, of the LG&E Percentage or the KU Percentage (as applicable), multiplied by the product of: (i) the Solar Energy Payment Rate; and (ii) the sum of Solar Energy Output (MWh) delivered to the Point of Interconnection from the Facility during that hour plus all Curtailed Energy during that hour; provided, however, if the aggregate Solar Energy Output during a Year includes Excess Solar Energy, then the portion of any Solar Energy Payment attributable to such Excess Solar Energy shall be determined as set forth above in this Section 8.1(A), but using the Excess Solar Energy Payment Rate in place of the Solar Energy Payment Rate.

(B) Test Energy Payment. Subject to Section 4.3, each Buyer shall pay Seller for Test Energy generated prior to the Commercial Operation Date by making a monthly payment due and payable in each Monthly Billing Period in accordance with the invoicing procedures set forth in Section 9.1, equal to the product of the LG&E Percentage or the KU Percentage (as applicable) of: (a) the Solar Energy Payment Rate; and (b) the amount of Test Energy (MWh) delivered during that Month.

8.2 Curtailed Energy.

(A) If (i) Seller cannot deliver Solar Energy Output because of a Seller Delivery Excuse; or (ii) delivery of Solar Energy Output is curtailed by a Buyer other than as a result of an Emergency Condition, then, if permitted pursuant to Applicable Law, Seller may offer such Solar Energy Output ("Curtailed Energy") and all Renewable Energy Benefits that would have been produced by the Facility had its generation not been so curtailed ("Curtailed Renewable Energy Benefits") to third-parties as may be interested and able to purchase such Solar Energy Output. If Seller sells any Curtailed Energy or

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Curtailed Renewable Energy Benefits then the amount payable by Buyers pursuant to Section 8.1(A) shall be reduced by the net revenue received by Seller pursuant to such sale. Seller shall not be in default hereunder if it does not sell (or offer for sale) any Curtailed Energy or Curtailed Renewable Energy Benefits.

(B) The Parties shall determine the quantity of Curtailed Energy and Curtailed Renewable Energy Benefits by taking into account the following: (1) during such periods, the actual levels of solar irradiation and ambient conditions as measured at the Site, or if such data is not available, using other available data determined using Prudent Industry Practices, (2) the incremental energy that would have been produced based on ambient conditions at the Site, and (3) the actual availability of the Facility.

8.3 Availability Guaranty.

(A) On or before sixty (60) days after the Commercial Operation Date, Seller shall provide Buyers with the Production Model. The Production Model shall be used to calculate the Expected Amount. If a Party believes that the Production Model is inaccurate, such Party may propose an adjustment to the Production Model, and if the Parties are not able to resolve such issues within sixty (60) Days of the initial notice of the suspected inaccuracy, then the Parties shall submit such dispute to an independent engineering company with experience with solar production models to resolve such issue.

(B) Seller guarantees that the actual Availability of the Facility shall be at least [REDACTED] percent ([REDACTED]%) (the "Guaranteed Availability") measured over each Availability Day. From time to time, Buyers may, if Buyers' data indicates that an Availability Unsatisfactory Day has occurred, request that Seller provide, and Seller shall provide, a report of the Expected Amount determined using the Production Model; provided that, outside of any Availability LD Cure Period or Availability Default Period, Buyers shall be limited to making such requests no more than five (5) times in any Month. If Seller does not achieve the Guaranteed Availability for any Availability Day, Buyers may provide Seller with written notice that the Facility did not achieve the Guaranteed Availability (an "Availability Underperformance Notice"). If an Availability Underperformance Notice is delivered, then: (i) if an Availability Satisfactory Day occurs during the Availability LD Cure Period, then Seller shall not be in default hereunder; and (ii) if an Availability Satisfactory Day does not occur during the Availability LD Cure Period, Seller shall, for each Availability Day occurring after the Availability LD Cure Period and before the earlier of (A) the occurrence of an Availability Satisfactory Day or (B) the termination or expiration of this PPA, pay liquidated damages to Buyers (pro-rata to each Buyer in proportion to the LG&E Percentage or KU Percentage, as applicable) equal to: (1) the Guaranteed Availability minus the actual Availability on such Availability Day; multiplied by (2) the Expected Amount during such Availability Day; multiplied by (3) the LD Monetary Factor for such Availability Day determined in accordance with Section 8.3(C).

(C) The "LD Monetary Factor" for an Availability Day is equal to the lesser of (i) [REDACTED] or (ii) the greater of (1) the LD Avoided Cost Input for such Availability Day or (2) the LD REC Input for such Availability Day. If items (1) and (2) in the preceding

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sentence are the same amount, item (ii) shall be such amount. If items (i) and (ii) are equal, the LD Monetary Factor shall be [REDACTED].

(D) In the event liquidated damages become due under Section 8.3(B) Buyers shall, no more frequently than once per calendar month, calculate and issue a statement to Seller for the amount due Buyers for the amount due under Section 8.3(B). Seller shall pay the amounts due under each such invoice within thirty (30) Days of receipt thereof.

(E) Each Party agrees and acknowledges that (i) the damages that Buyers would incur due to the Facility's failure to achieve the Guaranteed Availability would be difficult or impossible to predict with certainty, (ii) the amount contemplated by this provision are a fair and reasonable calculation of such damages, and (iii) without limiting remedies with respect to an Event of Default, the required payment by Seller under this Section 8.3 shall be Buyers' sole remedy for the matters covered by this Section 8.3. Occurrence where the actual Availability is less than the Guaranteed Availability shall not be an Event of Default, except as provided in Section 12.1(C)(vii).

8.4 Payment Support Requirement. Neither Party shall initiate any action before any Governmental Authority to deny recovery of payments under this PPA, and each Party shall use its best efforts to defend all terms and conditions of this PPA consistent with Applicable Law.

8.5 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Points of Delivery at 11:59 p.m. EST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) On or before the tenth Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the Solar Energy Payment payable by each Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show information and calculations, in reasonable detail. Each Buyer shall pay Seller such invoiced amounts within thirty (30) Days of the date of delivery of such invoice.

(C) Subject to Section 4.3, beginning with the first Month following the Month in which any part of the Facility has been Commissioned until an invoice is required

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to be prepared pursuant to clause (B) above, Seller shall prepare an invoice showing the charges for Test Energy and Renewable Energy Benefits payable to Seller for the preceding Month. Each Buyer shall pay Seller such invoiced amounts within fifteen (15) Days of the date of such invoice.

(D) Each Buyer shall, subject to Sections 9.5 and 9.8, pay all invoices on or before the due date therein specified consistent with (C) above. If a Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(E) If any date on which any payment by Buyers would otherwise have been due is not a Business Day, then Buyers shall make such payment on the Business Day that immediately follows such payment date.

(F) In the event a Buyer directs Seller in writing to treat the other Buyer as the agent for billing purposes of the Buyer providing such direction, Seller shall, except as otherwise provided in this Section 9.1(F), direct its invoices under this PPA to the Buyer being identified as the agent of the other Buyer. Seller may request written confirmation of such an arrangement from the Buyer being designated as agent, and may condition such invoicing arrangement on receiving such confirmation. In the event one or both Buyers experience a Credit Event, Seller may thereafter decline to invoice either Buyer as agent for the other Buyer. The designation of a Buyer as the agent of the other Buyer shall have no effect on the obligations of the Buyers hereunder, including the LG&E Percentage or KU Percentage or the obligation to make payments due hereunder.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyers under this PPA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment. If either Party is billed or credited for any charges, costs, fees, penalties, credits or other amounts properly payable by the other Party pursuant to the terms of this Agreement, the Party receiving such invoice shall deliver such invoice to the other Party and such other Party shall pay such invoice within thirty (30) days after receipt by the receiving Party.

9.3 Currency and Method of Payment. Notwithstanding anything contained in this PPA, all payments to be made by either Seller or Buyers under this PPA shall be made in Dollars in immediately available cleared funds by automated clearing house (ACH) or wire transfer into the relevant account specified in this PPA or, if no account is specified, into the account designated by the receiving Party by written notice consistent with Article 13 below.

9.4 Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), if any payment due from Buyers to Seller or from Seller to Buyers under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be the Prime Rate, and shall continue to accrue from the date on which Contractor

provided Buyers with notice that such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party (the “Disputing Party”) may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within ten (10) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall, unless the terms of such settlement provide otherwise, be paid with interest thereon at the Prime Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive).

9.6 Statement Errors. In the event that either Party becomes aware of any error in any statement within one (1) year of the date of a statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of such error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid. No adjustment to a billing statement shall be made if notice of an error in such statement is not provided within one (1) year of the date of such statement.

9.7 Taxes.

(A) All Solar Energy Output delivered by Seller to Buyers hereunder is on a wholesale basis. Buyers may use the Solar Energy Output for their own consumption or resell it to third parties. Buyers shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably requested by Seller, to evidence that the deliveries of Solar Energy Output hereunder are sales for resale.

(B) Seller shall not be obligated to pay or reimburse Buyers for Taxes imposed on or measured by Buyers’ overall revenues or income. Each Buyer shall be responsible for the payment of, and no amount payable by Seller to a Buyer shall be subject to adjustment for, Taxes imposed on such Buyer and its property.

(C) If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly reimburse the other for such Taxes.

(D) The Parties shall provide each other, upon written request, with copies of any documentation that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any material financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Set-Off and Payment Adjustments. All payments between the Parties under this PPA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of set-off or otherwise. Payments to be made under this PPA shall, for a period of not longer than two (2) years, remain subject to adjustment based on billing adjustments due to error or omission by either Party, provided that such adjustments have been agreed to between the Parties or resolved in accordance with the provisions of Section 20.14 hereof.

9.9 Security Deposit. In the event a Buyer fails to make (directly or through the other Buyer) timely payment of two (2) or more Monthly invoices of Seller in any twelve (12) month period, such Buyer shall provide Seller (following Seller's invoice for such amount) with a cash security deposit from such Buyer equal to the average amount of the previous twelve (12) monthly invoices to such Buyer, and Seller shall retain such security deposit until such time as such Buyer has timely paid twelve (12) consecutive Monthly invoices, during which time Seller may apply such funds towards any invoice that is not paid by such Buyer when due.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

ARTICLE 10

Operations and Maintenance

10.1 Construction of the Facility.

(A) Starting on the date that falls one Month after the earlier of the date on which construction of the Facility commences or the date upon which a notice to proceed under the EPC Contract is given in accordance with the terms of the EPC Contract and, thereafter, at Monthly intervals, Seller shall report to Buyers on the construction of the Facility during the previous Month and shall provide progress reports and an updated completion schedule for the Facility. Such Monthly reports shall provide a schedule showing items completed and to be completed and a best estimate time-frame within which Seller expects its contractor to complete such non-completed work. None of the foregoing shall be deemed to be in lieu of, or in substitution for, the general record and reporting obligations attendant to Seller in accordance with Article 13 hereof.

(B) Other than the rights and obligations of Buyers specified in this PPA and any documents ancillary hereto, neither this PPA nor any such ancillary document shall be interpreted to create in favor of Buyers, and each Buyer specifically disclaims, any right, title or interest in any part of the Facility.

10.2 Commissioning Tests.

(A) Seller shall coordinate testing plans with Buyers by providing a Testing plan at least thirty (30) days prior to the first anticipated Test Date, updates to such Testing plan on a weekly basis, and at least forty-eight (48) hours prior notice of the actual Test Date and of the proposed Tests scheduled relating to the Commissioning of the Facility, which tests shall include insulation resistance (Megger) testing for all MV AC conductors, DC feeders, and Homeruns in accordance with NETA ATS 2013 7.3.3 ("Commissioning Tests"). Representatives of each Buyer shall have the right to be present at all such Testing. Seller shall promptly notify Buyers of any changes to the Test Date or the date of any Commissioning Tests relating to the Facility in order that Buyers may arrange for their respective representatives to attend.

(B) The results of Commissioning Tests, including the use of testing consistent with standard ASTM E2848-13(2018) (Standard Test Method for Reporting Photovoltaic Non-Concentrator System Performance), shall determine the Facility's Demonstrated Capacity. Seller may conduct multiple Commissioning Tests to determine the highest Demonstrated Capacity.

(C) Subject to Section 4.3, Test Energy shall be delivered by Seller for Buyers at the Point of Interconnection, and Buyers shall purchase such Solar Energy Output as set forth in Section 8.1(B).

10.3 Maintenance of the Facility. Seller shall at all times maintain or cause to be maintained all Facility equipment in accordance with manufacturers' recommendations and Prudent Industry Practices and otherwise in accordance with this PPA or Interconnection Agreement.

10.4 Scheduled Maintenance.

(A) Three (3) Months prior to the Commercial Operation Date and, thereafter, by October 1 of each Year, Seller shall deliver to Buyers and SCC the Projected Schedule for the Facility for the subsequent annual period, including Scheduled Maintenance Outages. Seller shall take manufacturers' recommendations and Prudent Industry Practices into account when establishing the proposed schedule for Scheduled Maintenance Outages, which schedule shall correspond with the Projected Schedule. Seller shall use commercially reasonable efforts to not schedule Scheduled Maintenance Outages and/or Additional Maintenance Outages during the daytime hours during the Months of June, July, August, or September (the "Non-Scheduled Maintenance Period").

(B) Within thirty (30) Days of receiving the proposed schedule for Scheduled Maintenance Outages from Seller, Buyers may propose amendments thereto.

Seller shall not unreasonably withhold its consent to such proposed amendments, provided that, it shall not be unreasonable for Seller to withhold its consent to any such proposed amendments that would be contrary to Prudent Industry Practices.

(C) Seller shall be entitled to change any Scheduled Maintenance Outages for the then current Year upon notice to Buyers and SCC. Seller shall not unreasonably refuse to change the schedule of Scheduled Maintenance Outages if requested to do so by Buyers upon not less than fourteen (14) Days' prior notice, provided that any such change would not be contrary to Prudent Industry Practices or cause Seller to incur any material costs.

(D) Any maintenance outages that do not correspond to the descriptions contained in clauses (A)-(C) of this Section 10.4 shall be deemed to be Additional Maintenance Outages under Section 10.5.

10.5 Additional Maintenance Outages. As the need arises for Seller to conduct further maintenance on the Facility during which the Facility is shut down or its output reduced in addition to that conducted pursuant to Section 10.4 hereof ("Additional Maintenance Outages"), Seller shall notify Buyers of such required maintenance, together with proposed dates for carrying out such additional maintenance and the estimated duration of the work to be carried out. Unless deferral of such maintenance would cause an Emergency Condition, Seller shall prepare a schedule of such Additional Maintenance Outages based on Prudent Industry Practices taking into account the reasonable requests of Buyers to the extent reasonably possible. Seller shall use Prudent Industry Practices to avoid Additional Maintenance Outages during the Non-Scheduled Maintenance Period. Notwithstanding the foregoing, Additional Maintenance Outages that consist of washing photovoltaic panels to improve production of the Facility may be performed by Seller upon written notice to Buyers.

10.6 Access to and Inspection of Facility.

(A) Seller shall provide Buyers and their authorized agents, employees and inspectors with reasonable access to the Facility for the purposes of inspecting the Facility consistent with Prudent Industry Practices. Each Buyer acknowledges that such access does not provide Buyers with the right to direct or modify the operation of the Facility in any way. Buyers shall abide by Seller's generally-applied safety procedures and rules while visiting the Site.

(B) No inspections of the Facility, whether by a Buyer or otherwise, shall relieve Seller of its obligation to maintain the Facility and operate the same in accordance with Prudent Industry Practices and Applicable Laws. In no event shall any statement, representation, or lack thereof by a Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Facility. Any inspection of Seller's property or equipment by a Buyer or any review by a Buyer or consent by a Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Facility equipment nor as a warranty or guarantee.

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**ARTICLE 11
Security**

11.1 Seller Security. Within ten (10) Business Days after the satisfaction of the Tier 1 Buyers' CP, Seller shall cause the Seller Credit Support to be provided to Buyers. The "Seller Credit Support" shall be maintained throughout the term of this Agreement and take the form of (i) a guaranty from an Affiliate of Seller with an Investment Grade Rating or (ii) a Surety Bond from a major U.S. commercial bank or surety company or the U.S. branch of a foreign bank or surety company with total assets of at least [REDACTED], and such bank or surety company having a long term senior debt obligations of which are rated "BBB+" or better by Standard & Poor's (S&P) or "Baa1" or better by Moody's (or an equivalent rating from an equivalent rating agency as may be approved by Buyers. The Seller Credit Support shall be in an aggregate amount of [REDACTED]. Seller may change the form of Seller Credit Support from time to time so long as such credit support is reasonably acceptable to Buyers and there is no lapse in Seller Credit Support. The form of Seller Credit Support shall be substantially in the form of Exhibit E (Guaranty) or one of the two forms attached as Exhibit C (Surety Bond). If the Seller Credit Support is in the form of a surety bond, Seller will furnish the audited financial statements of the surety company for the end of every fiscal year of such surety company. If the total assets of the surety company falls below [REDACTED] asset requirement or the general long-term senior unsecured debt obligation rating falls below BBB+ as rated by S&P Global Ratings, or Baa1 as rated by Moody's Investors Service, Inc. or a comparable rating by an entity succeeding to the functions and business of such rating agencies, then Buyer shall provide notice to Seller that it is in breach of its obligations under this Section 11.1, and Seller shall have ninety (90) days from notice to comply with this Section 11.1.

11.2 Effect of Security. Nothing in this Article 11, any security agreement or any surety bond is intended, or shall be deemed or construed to, in any way limit or modify any obligation or agreement of or recourse to the Parties hereunder.

**ARTICLE 12
Default and Remedies**

12.1 Events of Default of Seller.

(A) Any of the following shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

- (i) Seller's dissolution or liquidation;
- (ii) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or otherwise;

- (iii) The sale of Solar Energy Output by Seller to a third party, or diversion by Seller for any use of Solar Energy Output committed to Buyers by Seller other than in mitigation of damages for any breach by a Buyer of this PPA or during any period during which a Buyer does not take delivery of Solar Energy Output as described herein; and.
- (iv) Seller's failure to establish and maintain the Seller Credit Support in accordance with Article 11.

(B) Seller's failure to make any payment due hereunder (subject to Seller's rights with respect to disputed payments under Article 9) that is not cured within thirty (30) Days after Seller's receipt of notice of such nonpayment from Buyers shall constitute an Event of Default of Seller.

(C) Any of the following shall constitute an Event of Default of Seller upon its occurrence but shall be subject to cure within sixty (60) Days after the date of written notice from Buyers to Seller and the Financing Parties:

- (i) Seller's Abandonment of the Facility;
- (ii) Seller's assignment of this PPA except as permitted in accordance with Article 19;
- (iii) Any representation or warranty made by Seller in this PPA shall prove to have been false or misleading in any material respect when made and such misrepresentation or breach of warranty would reasonably be expected to result in a material adverse impact on Buyers;
- (iv) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period;
- (v) Seller's failure to comply with any other material obligation of Seller under this PPA, which would result in a material adverse impact on one or both Buyers;
- (vi) Seller's failure to comply with Section 10.3; or
- (vii) An Availability Satisfactory Day does not occur within an Availability Default Period.

(D) The following shall constitute an Event of Default of Seller upon its occurrence but shall be subject to cure within 90 Days after the date of written notice from

Buyers to Seller: the Commercial Operation Date is not achieved by Required Commercial Operation Date (as extended under Section 4.1(B)).

(E) It shall not be an Event of Default of Seller hereunder if Seller does not produce a specified amount of Solar Energy Output or Renewable Energy Benefits.

(F) Seller shall not be liable for or deemed in breach of this Agreement to the extent the performance of its obligations under this PPA is delayed or prevented by a Seller Delivery Excuse.

12.2 Events of Default of Buyers.

(A) Any of the following shall constitute an Event of Default of a Buyer upon its occurrence, and no cure period shall be applicable:

- (i) Such Buyer's dissolution or liquidation provided that division of such Buyer into multiple entities shall not constitute dissolution or liquidation;
- (ii) Such Buyer's assignment of this PPA or any of its rights hereunder for the benefit of creditors; or
- (iii) Such Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or such Buyer voluntarily taking advantage of any such law by answer or otherwise.

(B) Such Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9) that is not cured within thirty (30) Days of the date on which such payment is due shall constitute an Event of Default of such Buyer.

(C) Any of the following shall constitute an Event of Default of a Buyer upon its occurrence but shall be subject to cure within sixty (60) Days after the date of written notice from Seller to such Buyer:

- (i) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against such Buyer; provided, however, that such Buyer does not obtain a stay or dismissal of the filing within the cure period;
- (ii) Such Buyer's assignment of this PPA, except as permitted in accordance with Article 19;
- (iii) Any representation or warranty made by such Buyer in this PPA shall prove to have been false or misleading in any

material respect when made and such misrepresentation or breach of warranty is reasonably expected to result in a material adverse impact on Seller; or

- (iv) Such Buyer's failure to comply with any other material obligation of such Buyer under this PPA, which would result in a material adverse impact on Seller.

12.3 Damages Prior to Termination. Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.6, the non-defaulting Party shall have the right to suspend its performance of this Agreement and collect damages accruing prior to the termination of this PPA from the defaulting Party, and the payment of any such damages accruing prior to the cure of an Event of Default shall constitute an element of any respective cure. If a Buyer has committed an Event of Default, then Seller may suspend its performance hereunder and, if allowed by Applicable Law, sell the Solar Energy Output and Renewable Energy Benefits to a third party in an effort to mitigate the damages payable by Buyer, or may continue to deliver Solar Energy Output and Renewable Energy Benefits to such Buyer.

12.4 Termination.

(A) Upon the occurrence of an Event of Default that is not cured within the applicable cure period, if any, the non-defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and thirty (30) Days after the notice thereof, upon which this PPA shall terminate (the "Early Termination Date"); provided, however, that if a Buyer Event of Default has occurred, then Seller may terminate this Agreement with regard to only such Buyer. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA.

(B) Upon the termination of this PPA under this Section 12.4, the non-defaulting Party shall be entitled to receive from the defaulting Party, subject to the limitation on damages set forth in Section 12.6, all of the damages incurred by the non-defaulting Party in connection with such termination, that shall be determined on a "cost-to-cover" basis. Such payment shall be the exclusive remedy of the non-defaulting Party in connection with the termination of this PPA, but shall 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 PPA as its remedy for an Event of Default by the defaulting Party.

(C) In determining the losses that Seller will incur upon a termination of this Agreement by Seller under this Section 12.4, Buyers understand and agree that Seller may not be able to sell the Solar Energy Output on a commercially reasonable basis, and therefore Seller would not be able to mitigate its losses by selling the Solar Energy Output to a third-party, and therefore its losses would equal the net present value (determined using a discount rate of five percent (5%)) at the time of termination of all Solar Energy Output that would have been produced from the date of termination of the

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PPA through the end of the Term (had the PPA not been terminated), minus avoided operating costs. If the PPA is terminated by Seller under this Section 12.4 during the first seven (7) years after the Commercial Operation Date, Seller's losses will include any anticipated recapture of Tax Credits and lost depreciation. After Buyers make a termination payment to Seller, if Seller is able to enter into new arrangements to sell the Solar Energy Output and Renewable Energy Benefits of the Facility, then Seller shall recalculate the termination payment based on such new arrangements and shall reimburse Buyers in the amount of the reduced termination payment.

(D) Subject to Section 12.4(E), in determining the losses that Buyer will incur upon a termination of this Agreement by Buyer under this Section 12.4, notwithstanding anything herein to the contrary (other than the provisions of Section 12.4(E)), Buyers' cost-to-cover losses shall be calculated using the projected Avoided Cost Rate as the replacement cost of electricity, and using the LD REC Input as the replacement cost of Renewable Energy Benefits. Such determination of Buyer's losses shall be based on the net present value (determined using a discount rate of five percent (5%)) of losses for the remainder of the Term at the time of termination.

(E) Seller's liability under Section 12.4(D) shall be limited to [REDACTED] (including amounts collected from the Seller Credit Support); provided, if Seller is able to enter into new arrangements to sell the Solar Energy and RECs attributable to Solar Energy within two (2) years of the date of termination and the pricing for such Solar Energy or RECs is greater than pricing under this PPA, then Buyers' cost-to-cover losses shall be recalculated to reflect the differences between the prices included in such new arrangements entered into by Seller and the lower prices under this PPA, and Seller shall pay Buyers the amount of the resulting increased termination payment without regard to the limitation of liability stated in this Section 12.4(E). The obligation to make such increased termination shall survive the termination of this PPA.

12.5 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.6, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.6 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only, which shall include cover damages and the related costs to procure alternative arrangements. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); provided, that if either Party is held liable to a third party for such damages, and the Party held liable for such damages is entitled under Article 17 to indemnification therefor from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such

damages, all in accordance with the indemnification provisions of Article 17 hereof. To the extent any damages are required to be paid hereunder are described as or deemed liquidated, the Parties acknowledge that such damages do not constitute a penalty, that such damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that such damages constitute a reasonable approximation of the harm or loss.

12.7 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this PPA.

12.8 Non-Recourse. Each Buyer acknowledges and agrees that no owner, member, investor, lender, lessor, officer, director, employee, or agent of Seller shall have any obligation to Buyers arising under this PPA, and that Buyers shall seek recourse solely against Seller, its assets, and the Seller Credit Support in the event of any breach of this PPA by Seller. Seller acknowledges and agrees that no owner, member, investor, lender, lessor, officer, director, employee, or agent of a Buyer shall have any obligation to Seller arising under this PPA, and that Seller shall seek recourse solely against Buyers and their assets in the event of any breach of this PPA by a Buyer.

ARTICLE 13

Contract Administration and Notices

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit A as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall be made by personal delivery, recognized express courier, or electronic mail (immediately followed by recognized express courier). Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close, in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations shall be exempt from this Section.

13.2 Records. Seller and Buyers shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyers pertaining to the operation of the Facility and/or this PPA as specified herein or otherwise shall be maintained at the Facility or in an office of Seller or Buyers, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right, upon reasonable prior written notice to the other Party and at its own expense, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to confirmation of such Party's performance of its obligations under this PPA (including all records and data relating to or substantiating any charges paid by or to such other Party under this PPA, MWh

generated by the Facility, Seller's operating procedures, the Facility equipment manuals, and Facility O&M Records).

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, with records of solar irradiation and energy production for each clock hour, changes in operating status, meteorological data, maintenance, any other operating or maintenance records as may be required by state or federal regulatory authorities and pursuant to any Non-Governmental Compliance Obligations, Forced Outages, agreements associated with the Facility, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, including supply contracts, whether in printed or electronic format, that Seller uses or maintains for the operation of the Facility (collectively, the "O&M Records").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyers shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records. All records of Seller pertaining to the operation of the Facility shall be maintained at the Site or in an office of Seller.

13.3 Provision of Real Time Data. Upon request from Buyers, Seller shall provide real-time electronic access to Buyers of all solar irradiance and meteorological data collected at the Facility and corresponding unit availability data as well.

ARTICLE 14

Force Majeure and Seller Delivery Excuse

14.1 Definition of Force Majeure Event.

(A) "Force Majeure" shall mean a cause or event that actually and proximately prevents either Party, in whole or in part, from performing any of its obligations under this PPA including, acts of God; unusually severe actions of the elements such as floods, inundation, landslides, earthquake, lightning, hurricanes, or tornadoes; unusually severe weather; terrorism; war (whether or not declared); sabotage; acts or threats of terrorism; riots or public disorders; delays in obtaining necessary permits and regulatory approvals (except as provided below in this Section 14.1(A)); strikes or labor disputes not expressly excluded below; actions or failures to act of an unaffiliated third party supplier of goods or services (to the extent caused by an event which would meet the definition of Force Majeure); equipment failure; environmental issues not identified in reports and studies prepared by Seller and which delay construction of the Facility; actions or failures to act of any Governmental Authority (including, except as provided below in this Section 14.1(A), the failure to issue permits); blockade; embargo; military or governmentally usurped power, expropriation, or requisition to the extent preventing or delaying the performance of the Party claiming Force Majeure; or any other event beyond the reasonable control of the Party claiming Force Majeure, whether or not foreseeable, but only to the extent the Party claiming Force Majeure is unable to prevent, avoid or overcome any of the events described above in this Section 14.1 through the

exercise of commercially reasonable efforts, and such event is not the result of the fault or negligence of the Party claiming Force Majeure. Notwithstanding the foregoing, failure of a Governmental Authority to issue any permit serving as the basis for a Buyers' CP or Seller's CP shall not constitute Force Majeure.

(B) "Force Majeure" shall not include: (i) any failure of, or delay in performance, or any full or partial curtailment in the electric output of the Facility that is caused by a labor dispute or strike by Seller's employees or any employees of Seller's contractors employed at the Facility (except to the extent arising out of a strike or labor action not directed specifically at the Seller or the Facility, including without limitation, a national or regional strike), (ii) market changes in, or that otherwise effect, the price of energy, capacity or Renewable Energy Benefits, or (iii) any Change in Applicable Law that effects the value or existence of Renewable Energy Benefits.

14.2 Effect of Force Majeure.

(A) In no event will any delay or failure of performance caused by Force Majeure extend this PPA beyond its stated Term. Notwithstanding any other provision in this PPA to the contrary, in the event that any delay or failure of performance caused by Force Majeure affecting Seller continues for an uninterrupted period of twelve (12) months from its inception, either Seller or Buyers may, at any time following the end of such period if the Force Majeure event is still in effect, terminate this PPA upon written notice to the other Parties, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(B) Except as otherwise provided in this PPA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure event but only and to the extent thereof, and only if: (i) the non-performing Party gives the other Party notice describing the occurrence of the Force Majeure event as described in Section 14.3; (ii) the non-performance is of no greater scope and of no longer term than is required by the Force Majeure event; and (iii) the non-performing Party uses commercially reasonable efforts to remedy its inability to perform.

(C) The existence of a condition of Force Majeure event shall not relieve the Parties of obligations under this PPA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition or Force Majeure event.

14.3 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure event, the Party claiming that a Force Majeure event has occurred shall notify the other Party immediately by telephone and/or email, and in writing, within five (5) Days of such occurrence, of the nature, cause, date of commencement thereof, and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure event requires. A Party claiming that a Force Majeure event has occurred shall not be entitled

to any relief therefor unless and until conforming notice is provided. The Party claiming that a Force Majeure event has occurred shall notify the other Party of the cessation of the Force Majeure event or of the conclusion of the affected Party's cure for the Force Majeure event, in either case within two (2) Business Days thereof.

14.4 Duty to Mitigate. The Party claiming that a Force Majeure event has occurred shall use its best efforts to cure the cause(s) preventing its performance of this PPA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure event and perform its obligations pursuant to Section 14.5 below; provided, however, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.5 Force Majeure Restoration.

(A) In the event that, as a result of one or more Force Majeure event(s) or its or their effects or by any combination thereof, the construction or operation of the Facility or any part thereof is affected and is not restored or remedied within thirty (30) Days following the date the Force Majeure event(s) began, then Seller shall prepare and deliver to Buyers a Restoration Report pursuant to Section 14.7.

(B) Subject to clause (C) below, Seller shall proceed with the remedying of the construction or operation of the Facility ("Restoration") in accordance with a schedule contained in the relevant Restoration Report, as defined in Section 14.7 hereof (the "Restoration Schedule"). The cost of such Restoration shall be the sole responsibility of Seller and no compensation shall be payable by Buyers to Seller with respect to any damage to the Facility as a result of the Force Majeure event.

(C) If Seller's Financing Documents do not require the use of insurance proceeds for the prepayment of Seller's obligations thereunder, then Seller shall be obligated to use all insurance proceeds to restore the Facility, and the Demonstrated Capacity of the Facility after such restoration shall be adjusted to the actual installed capacity of the Facility, notwithstanding that such capacity is lower than the Minimum Demonstrated Capacity. If Seller's Financing Documents require the use of insurance proceeds for the prepayment of Seller's obligations thereunder then Seller shall have the right to terminate this PPA without further liability to Buyers.

14.6 Restoration Consents. Notwithstanding anything herein to the contrary, Seller shall not be required to proceed with any Restoration unless and until it shall have received all necessary third-party consents and any Governmental Approvals required therewith. If Seller does not receive any such third-party consents or any Governmental Approvals required therewith for any reason (other than an act, omission or default of Seller) within six (6) Months after the date that it becomes obligated to proceed with such Restoration, then either Seller or Buyers shall have the right to terminate this PPA.

14.7 Preparation of Restoration Report. When required by Section 14.5, Seller shall commence the preparation of an appraisal report (the "Restoration Report") within thirty (30) Days after the date it was required to provide a notice under Section 14.3 and shall deliver a copy of such Restoration Report to Buyers within sixty (60) Days after provision of such notice was required. Buyers shall provide Seller such information as it reasonably requires to prepare such Restoration Report. The Restoration Report shall be accompanied by reasonable supporting data and certificates and reports of financial and technical advisers of Seller, as appropriate or as reasonably requested by Buyers, in support of the Force Majeure event in question, and shall include (A) a description of such Force Majeure event and its impact on the Facility, (B) an estimate in good faith of the time required to restore the Facility (insofar as practicable) to its condition immediately prior to the occurrence of the Force Majeure event, and (C) a proposed Restoration Schedule.

14.8 Discussion of Restoration Report. Within fifteen (15) Days of the delivery of a Restoration Report to Buyers or such further time as the Parties may agree, the Parties shall meet to discuss the Restoration Report and any action to be taken.

ARTICLE 15

Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties, and Covenants. Seller hereby represents and warrants to Buyers as follows as of the Effective Date and as of the Commercial Operation Date:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware. Seller is qualified to do business in the Commonwealth of Kentucky and each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary corporate action, and do not and will not:

- (i) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Buyers upon execution of this PPA);
- (ii) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

- (iii) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or
- (iv) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) The obligations of Seller under this PPA are valid and binding obligations of Seller, enforceable against the Seller by Buyers, subject to customary exceptions for public policy and bankruptcy.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility.

(E) To the best knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in writing by Seller to Buyers, all Governmental Approvals necessary for Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) As of the Commercial Operation Date, Seller shall have been certified as an "exempt wholesale generator" as such term is defined in the regulations of the Federal Energy Regulatory Commission.

(H) Seller has not taken action causing either Buyer to be deemed to be the registered "Generator Owner" or "Generator Operator" with respect to the Facility as such terms are used in the NERC Reliability Standards.

(I) Seller has not sold or committed to sell to any Person any Solar Energy Output, Renewable Energy Benefits or Capacity Rights to any Person.

(J) Seller either (i) owns the real property comprising the Site or (ii) has obtained the necessary real property rights to construct and operate the Facility on the Site throughout the Term.

(K) Seller will have as of the Commercial Operation Date, and shall thereafter maintain sufficient funds available to it to perform all obligations under this Agreement and to consummate the obligations contemplated pursuant hereto.

15.2 Buyers' Representations, Warranties, and Covenants. Each Buyer hereby represents and warrants to Seller as follows as of the Effective Date and as of the Commercial Operation Date:

(A) Such Buyer is a corporation, duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of such Buyer. (KU is also incorporated in Virginia.) Such Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by such Buyer have been duly authorized by all necessary corporate action, and do not and will not:

- (i) require any further consent or approval, including from such Buyer's Board of Directors;
- (ii) violate any Applicable Law, or violate any provision in any corporate documents of such Buyer, the violation of which could have a material adverse effect on the ability of such Buyer to perform its obligations under this PPA;
- (iii) result in a breach or constitute a default under such Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of such Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which such Buyer is a party or by which such Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of such Buyer to perform its obligations under this PPA; or
- (iv) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of such Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably

be expected to have a material adverse effect on the ability of such Buyer to perform its obligations under this PPA.

(C) The obligations of such Buyer under this PPA are valid and binding obligations of such Buyer, enforceable against it by the Seller, subject to customary exceptions for public policy and bankruptcy.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which such Buyer is a party or any judgment, order, statute, or regulation that is applicable to such Buyer.

(E) To the best knowledge of such Buyer, all required Governmental Approvals necessary for such Buyer's execution, delivery and performance of this PPA, other than Governmental Approvals identified as Buyer Conditions Precedent, have been duly obtained and are in full force and effect.

ARTICLE 16 Insurance

16.1 Evidence of Insurance.

(A) Seller shall, at least thirty (30) Days prior to the commencement of any work on the Facility, and thereafter, on or before June 1 of each year of the Term, provide Buyers with one (1) copy of insurance certificates reasonably acceptable to Buyers evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit B and this Article 16. Such certificates shall provide a waiver of any rights of subrogation against Buyers and their Affiliates and their respective officers, directors, agents, subcontractors, and employees; and shall contain such other endorsements and terms as required hereunder. All policies shall be written with insurers that Buyers, in their reasonable discretion, deem acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyers). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences during the term of this PPA. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Effective Date.

16.3 Endorsements and Other Requirements.

(A) Insurers shall waive all rights of subrogation against Buyers and their Affiliates and their respective officers, directors, agents, subcontractors, and employees.

(B) The insurance required under this PPA shall be primary insurance. Any other insurance carried by Buyers shall be excess and not contributory with respect to the insurance required hereunder.

(C) The liability insurance required pursuant to Exhibit B shall be endorsed to include Buyers, their Affiliates, and their respective officers, directors, and employees as additional insureds only to the extent Buyers (or other additional insured) are vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit B shall state, that with respect to coverage of more than one insured, all terms, conditions, insuring agreements, and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

ARTICLE 17

Indemnity

17.1 Indemnification.

(A) Each Buyer and Seller shall each be responsible for its own facilities. Buyers and Seller shall each be responsible for ensuring adequate safeguards for Buyers, Buyers' customers, and personnel and equipment belonging to Buyers, and for the protection of their own generating systems.

(B) Seller agrees, to the extent permitted by Applicable Law, to indemnify, pay, defend, and hold harmless the Buyers, their Affiliates, their respective officers, directors, employees, agents, and contractors (hereinafter called respectively, "Buyer Entities") from and against any and all claims, demands, costs, or expenses for loss, damages, or injury to persons or property of the Buyer Entities (or to third parties) directly caused by, arising out of, or resulting from:

- (i) a breach by Seller of its covenants, representations, and warranties or obligations hereunder;
- (ii) any act or omission by Seller or its contractors, agents, servants or employees in connection with the installation or operation of its generation system or the operation thereof in connection with the other Party's system;
- (iii) any defect in, failure of, or fault related to, the Seller's generation system; or
- (iv) the negligence or willful misconduct of the Seller or its contractors, agents, servants or employees.

(C) Each Buyer, on a several but not joint basis, agrees, to the extent permitted by Applicable Law, to indemnify, pay, defend, and hold harmless Seller, its Affiliates, their respective officers, directors, employees, agents, and contractors

(hereinafter called respectively, "Seller Entities") from and against any and all claims, demands, costs, or expenses for loss, damages, or injury to persons or property of a Seller Entity (or to third parties) directly caused by, arising out of, or resulting from:

- (i) a breach by such Buyer of its covenants, representations, and warranties or obligations hereunder; or
- (ii) the negligence or willful misconduct of such Buyer or its contractors, agents, servants or employees.

17.2 Indemnification for Fines and Penalties. Any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or omissions of the other Party) for non-compliance with any municipal, state or federal laws shall be the sole responsibility of the non-complying Party.

17.3 Notice of Proceedings. Each Party shall promptly notify the other Party of any loss or proceeding in respect of which such notifying Party is or may be entitled to indemnification pursuant to Section 17.1. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the loss or proceeding and that such loss or proceeding may give rise to an indemnification. The delay or failure of such Indemnified Party to provide the notice required pursuant to this Section 17.3 to the other Party shall not release the other Party from any indemnification obligation it may have to such Indemnified Party except (i) to the extent that such failure or delay materially and adversely affected the Indemnifying Party's ability to defend such action or increased the amount of the loss, and (ii) that the Indemnifying Party shall not be liable for any costs or expenses of the Indemnified Party in the defense of the claim, suit, action or proceeding during such period of failure or delay.

17.4 Defense of Claims.

(A) The Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense with counsel of its selection, subject to the prior approval of the Indemnified Party, which shall not be unreasonably withheld.

(B) Unless and until the Indemnifying Party assumes control of the defense of a claim, suit, action or proceeding in accordance with clause (A) above, the Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the Indemnifying Party hereunder.

(C) Neither the Indemnifying Party nor the Indemnified Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior consent of the other; provided, however, that after agreeing in writing to indemnify

the Indemnified Party, the Indemnifying Party may, subject to clause (D) below, settle or compromise any claim without the approval of such Indemnified Party. If a Party settles or compromises any claim, action, suit or proceeding in respect of which it would otherwise be entitled to be indemnified without the prior consent of the Indemnifying Party, the Indemnifying Party shall be excused from any indemnification obligation in respect of such settlement or compromise.

(D) Following the acknowledgement of the indemnification and the assumption of the defense by the Indemnifying Party pursuant to clause (A) above, the Indemnified Party shall have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless: (i) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or (ii) the Indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defense of such action and shall have been so notified by the Indemnified Party.

17.5 Subrogation.

Upon payment of any indemnification pursuant to Section 17.1 above, the Indemnifying Party, without any further action, but subject to such limits as may be imposed below, shall be subrogated to any and all Claims that the Indemnified Party may have relating thereto, and the Indemnified Party shall, at the request and expense of the Indemnifying Party, cooperate with the Indemnifying Party and give at the request and expense of the Indemnifying Party such further assurances as are necessary or advisable to enable the Indemnifying Party vigorously to pursue such Claims.

ARTICLE 18

Legal and Regulatory Compliance

18.1 Applicable Laws. Seller shall promptly notify Buyer of any investigations, notices, or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection, or inquiry that has been commenced by any Governmental Authority in respect of a potential or possible violation of Applicable Law.

18.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and shall timely and properly pay its respective charges and fees in connection therewith.

18.3 Compliance with Reliability Standards. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by NERC, FERC, the RE or any successor agency, for lack of compliance with reliability standards, Seller shall reimburse Buyer for its share of monetary penalties.

18.4 Change in Applicable Law. No Change in Applicable Law that eliminates, reduces or otherwise modifies any obligations of a Buyer to obtain Renewable Energy Benefits to comply with Applicable Law shall, in any such case, modify the obligations of the Parties hereunder.

ARTICLE 19

Assignment and Other Transfer Restrictions

19.1 No Assignment Without Consent. Except as permitted in this Article 19, neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party; provided, (i) at least thirty (30) Days prior notice of any such assignment shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations hereunder; (iii) no assignment shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform; (iv) no assignment shall impair any security given by Buyer hereunder; and (v) before this PPA is assigned, the assignee must first obtain such approvals as may be required by all applicable regulatory bodies.

19.2 Transfers. Notwithstanding Section 19.1 and Article 7.1(C), but subject to the limitations in Section 19.3, Seller may: assign, pledge, hypothecate, or otherwise transfer, as and for, among other purposes, collateral security, in connection with any financing or the refinancing of the Facility, including a sale of this PPA, together with a sale of the Facility, combined with the lease back to Seller of the PPA and Facility, as part of a sale-leaseback financing transaction. In connection with any such permitted transfer by Seller, Buyer agrees to execute a written consent to such collateral assignment as may be reasonably requested, which collateral assignment may include, among other terms, Buyer's agreement not to terminate this PPA on account of any Event of Default without written notice to the Financing Parties and first providing the Financing Parties with such opportunity to cure such Event of Default. If such written consent is not requested, Seller shall notify Buyer of any such assignment to the Financing Parties no later than thirty (30) Days after the assignment. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Buyer, provided, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

19.3 Buyers' Consent. A Buyer may withhold its consent to a proposed assignment by Seller pursuant to Section 19.1 if the proposed transferee is: (A) an entity that at the time of such proposed transfer is, or within the five years prior to the Commercial Operation Date has been, adverse to a Buyer in a litigation or administrative proceeding; or (B) not experienced (and has not contracted for the operation of the Facility with a third-party that is experienced) in operating and maintaining a solar power generation facility of at least 10 MWac.

ARTICLE 20

Miscellaneous

20.1 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage

of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

20.2 Rate Changes.

(A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act.

(B) Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party (acting unilaterally in violation of this Section 20.2), a non-party, or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in United Gas Pipe Line v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra doctrine").

20.3 Disclaimer of Third Party Beneficiary Rights. In executing this PPA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

20.4 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform services for such Party, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by a Party shall be considered employees of the other Party for any purpose; nor shall a Party represent to any person that he or she is or shall become an employee of the other Party.

20.5 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, remedies, or indemnities which obligation shall survive for the period of the applicable statute(s) of limitation.

20.6 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits or Schedules, or the application of any such terms, covenants, or

conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; provided, however, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

20.7 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Buyers and Seller with respect to the subject matter hereof, and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect to the sale of Solar Energy Output and Renewable Energy Benefits from the Facility. This PPA and the Exhibits and Schedules attached hereto may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto

20.8 Binding Effect. This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

20.9 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

20.10 Counterparts. This PPA or any supplement, modification, amendment, or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

20.11 Governing Law. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law.

20.12 Confidentiality.

(A) For purposes of this Section 20.12, “Disclosing Party” refers to the Party disclosing information to the other Party, and the term “Receiving Party” refers to the Party receiving information from the other Party.

(B) The Parties agree to and acknowledge that certain terms, conditions and provisions of this PPA will need to be disclosed in connection with Buyers’ satisfaction of the conditions set forth in Section 6.2, including seeking PSC approvals and with

respect to seeking transmission service from the Interconnection Provider, and Buyers shall be permitted to make any necessary disclosures of Confidential Information in connection therewith (including any ongoing requirements), provided that Buyers shall use reasonable efforts to keep such disclosures confidential to the extent permitted. The Parties agree to and acknowledge that certain terms, conditions and provisions of this PPA will need to be disclosed in connection with Seller's satisfaction of the conditions set forth in Section 6.1, including seeking approval from the Kentucky Public Service Commission Electric Generation and Transmission Siting Board and with respect to seeking transmission service, and Seller shall be permitted to make any necessary disclosures of Confidential Information in connection therewith (including any ongoing requirements), provided that Seller shall use reasonable efforts to keep such disclosures confidential to the extent permitted.

(C) In any proceeding before any applicable Governmental Authority relating to this PPA, Seller and Buyers shall each be entitled to disclose Confidential Information as permitted under Applicable Law. In such event, Seller and/or Buyers shall take all reasonable steps to limit the scope of any disclosure of Confidential Information and shall use its best efforts to make such disclosure of Confidential Information in an executive session or any protective order or other similar procedure.

(D) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (F) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its affiliates and any of their directors, officers, employees, financial advisors, legal counsel, accountants, authorized agents of the Receiving Party identified in writing to the Disclosing Party, and current and potential investors (collectively, 'Receiving Party's Representatives'), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this PPA. The Parties agree that (i) such Receiving Party's Representatives will be informed by the Receiving Party of the confidential nature of the Confidential Information and the requirement and the limitations of its use, (ii) such Receiving Party's Representatives will be required to agree to and be bound by the terms of this Section 20.12 as a condition of receiving the Confidential Information, and (iii) in any event, the Receiving Party will be responsible for any disclosure of Confidential Information, or any other breach of confidentiality provisions of this PPA, by any of its Receiving Party's Representatives. The Receiving Party shall not disclose the Confidential Information to any person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). To the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority, the Disclosing Party shall use all available means to ensure that such Confidential Information is not made public.

(E) If the Receiving Party or its Receiving Party's Representatives are requested or required (by a FOIA request, oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, or by applicable law) to disclose any Confidential Information, the Receiving Party shall

promptly notify the Disclosing Party of such request or requirement, if that notification can be made without violating the terms of such compelled disclosure, so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Section 20.12 with respect to such disclosure. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Receiving Party's Representatives are, in the opinion of their legal counsel, compelled to disclose the Confidential Information, the Receiving Party and its Receiving Party's Representatives may disclose only such of the Confidential Information to the party compelling disclosure as is required by law and, in connection with such compelled disclosure, the Receiving Party and its Receiving Party's Representatives shall use their reasonable efforts to obtain from the party to whom disclosure is made written assurance that confidential treatment will be accorded to such portion of the Confidential Information as is disclosed.

(F) As used in this Section 20.12, "Confidential Information" means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other (including electronic) means), or which concerns this PPA, the Disclosing Party or the Disclosing Party's stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as "confidential" (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information). Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, affiliate, stockholder, consultant, agent, or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this PPA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this PPA:

- (i) information which is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Receiving Party's Representatives;
- (ii) information which can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis prior to being furnished to the Receiving Party by the Disclosing Party;
- (iii) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party; and
- (iv) information developed by the Parties during the negotiation of this PPA that relates solely to this PPA (as opposed to

confidential business or operating information of either Party), which information shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties prior to the negotiation of this PPA.

(G) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this PPA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this PPA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this PPA, or destroyed.

(H) It is understood and agreed that neither this PPA nor disclosure of any Confidential Information by the Disclosing Party to the Receiving Party shall be construed as granting to the Receiving Party or any of its Receiving Party's Representatives any license or rights in respect of any part of the Confidential Information disclosed to it, including any trade secrets included in any such Confidential Information.

20.13 Press Releases and Media Contact. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size, type and timing of the Facility, the long-term nature of this PPA, and other relevant factual information about the relationship. In the event during the Term, either Party is contacted by the media concerning this PPA or the Facility, the contacted Party shall inform the other Party of the existence of the inquiry, and shall jointly agree upon the substance of any information to be provided to the media.

20.14 Jurisdiction; Venue; Waiver of Jury Trial With respect to any disputes arising out of or related to this PPA and not resolved through regular discussion, the Parties will use all reasonable efforts to reach a satisfactory solution by referring the dispute to senior management (officer of a corporation or manager or managing member of a limited liability company) of each of the Parties. Senior management of the Parties will meet (in person or telephonically) as soon as possible, on no less than seven (7) days' written notice, unless specifically agreed otherwise and shall negotiate in good faith. Senior management of the Parties shall examine any submissions by the Parties, and shall, if the dispute cannot be resolved within two (2) days (or longer as agreed to by the Parties), agree to convene for further negotiations aimed at resolving the dispute. Should senior management of the Parties be unable to resolve the dispute within thirty (30) days after commencement of negotiation by such senior management, if any of the Parties fails to comply with the time periods set forth above, or commencement of litigation is necessary to comply with a statute of limitations or contractual obligation, then the Parties

agree that upon prior written notice to the other Parties, the Parties consent to the exclusive jurisdiction of, and venue in, the state or federal courts located in Louisville, Kentucky to resolve such dispute. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this PPA.

Seller:

Rhudes Creek Solar, LLC

By: 


Name: TIMOTHY C. KIM

Title: PRESIDENT

Date: 11/21/2019


Buyer:

Louisville Gas and Electric Company

By: 

Name: David S. Sinclair

Title: VP Energy Supply & Analysis

Date: 11-22-19 

Kentucky Utilities Company

By: 

Name: David S. Sinclair

Title: VP Energy Supply & Analysis


Date: 11-22-19 

EXHIBIT A

NOTICE ADDRESSES

To Seller:

ibV Energy Partners LLC
777 Brickell Ave. Suite 500
Miami, FL 33131
Attention: Timothy C. Kim

With a copy to:

Henry R. King
Reed Smith LLP
506 Carnegie Center
Suite 300
Princeton, NJ 08540

To Buyers:

Director – Power Supply
Charles R. Schram
LG&E and KU Energy LLC
220 W. Main St.
Louisville, KY 40202
Telephone: [REDACTED]
email: [REDACTED]

With a copy to:

Senior Corporate Attorney
James J. Dimas
LG&E and KU Services Company
220 W. Main St.
Louisville, KY 40202
Telephone: [REDACTED]
email: [REDACTED]

EXHIBIT B

INSURANCE COVERAGES

A. Worker's Compensation Insurance. To cover obligations imposed by federal and state statutes pertaining to Seller's employees, and Employer's Liability Insurance with a limit of one million Dollars (\$1,000,000).

B. Commercial General Liability Insurance, or the equivalent, with a limit of one million Dollars (\$1,000,000) per occurrence. This policy shall include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations. Each Buyer shall be named as an additional insured with regard to this coverage.

C. Business Automobile Liability Insurance, or the equivalent, with limit of one million Dollars (\$1,000,000) per accident with respect to Seller's vehicles whether owned, hired, or non-owned.

D. Excess Liability. Excess Liability Insurance covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of twenty-five million Dollars (\$25,000,000).

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above,

E. Property Insurance. During construction and operation, Seller shall provide standard form "All Risk" insurance covering 100% of the project cost. The All-Risk property insurance shall cover physical loss or damage to the Facility including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk property insurance shall include coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility.

EXHIBIT C
"FORM OF SURETY BOND" – TEMPLATE 1

BOND NUMBER XXXXXXXXXX

[SURETY COMPANY]
POWER PURCHASE AGREEMENT BOND

KNOW ALL MEN BY THESE PRESENTS, That we DEV/PROJECT CO LLC (hereinafter called "Principal"), and **[SURETY]** authorized to do business in the State of [STATE] (hereinafter called "Surety") are held and firmly bound unto [PPA COUNTERPARTY] (hereinafter called "Obligee") as Obligee, for such monetary amount as incurred by the Obligee, not to exceed the penal sum of XX Million XX Hundred Thousand and 00/100 (\$ XX,XXX,XX.00) DOLLARS, good and lawful money of the United States of America, the payment of which, well and truly to be made, we do bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS the above bounded Principal has entered into a certain written Contract with the above named Obligee, effective the _____ day of _____, 20____, for the Power Purchase Agreement which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length were attached herein.

The obligation of this Performance Bond shall be null and void unless: (1) the above Contract is in writing, and has been fully executed by both the Principal and the Obligee; (2) the Principal is in default under the above Contract, and is declared by the Obligee thereafter to be in default; and (3) the Obligee has provided written notice of the default to the Surety as promptly as possible, and in any event, **within ten (10) days after notice of such default is sent to Principal.**

The Surety, at the sole election and discretion of the Surety, may take any of the following actions:

1. With notice to the Obligee, provide financial assistance to the Principal to effect a remedy any contractual default by the Principal; or
2. Determine the amount for which the Surety may be liable to the Obligee, and as soon as practicable thereafter, tender payment thereof to the Obligee; or
3. Pay the full amount of the above penal sum in complete discharge and exoneration of this Performance Bond, and of all liabilities of the Surety relating hereto.

If the Surety so elects to act, all payments and expenditures by the Surety shall be applied against the above penal sum and in reduction of the limit of liability of the Surety.

PROVIDED HOWEVER, that this bond is executed by the Surety and accepted by the Obligee subject to the following expressed conditions:

1. A Reorganization under Chapter 11 of the US Bankruptcy Code by the Principal shall not constitute an event of default recoverable under this bond if they continue to perform their obligations under the Contract (including but not limited to timely payment of all amounts due under the contract), and provided that Principal assumes the contract within 30 days of the filing of any bankruptcy petition.
2. This bond is for the term beginning _____ and expiring _____. **The bond will automatically renew for a one year period upon the expiration date** set forth above and upon each anniversary of such date, unless at least thirty (30) days prior to such expiration date, or prior to any anniversary of such date, Surety provides written notice to both the Obligee and Principal of its intention to non-renew this bond.
3. Neither non-renewal by the Surety, nor failure, nor inability of the Principal to file a replacement bond shall constitute a default by the Principal and entitle the Obligee to recover the full amount under this bond.
4. Surety's liability under this bond and all continuation certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.
5. No claim, action, suit or proceeding, except as herein set forth, shall be had or maintained against the Surety on this bond unless same be brought or instituted and process served upon the Surety within six months following the expiration of the original term of this bond, or extended term as provided herein.

In the event of conflict or inconsistency between the provisions of this Performance Bond and the provisions of the above Contract, the provisions of this Performance Bond shall control. The Obligee's acceptance of this bond and reliance upon it as security constitutes its acknowledgement and agreement as to the explicit terms stated herein under which it is offered and issued by the Surety.

Sealed with our seals and dated this _____ **DAY** _____ day of _____ **MONTH** _____, 20_____.

WITNESS:

DEV/PROJECT CO LLC:

(Name & Title)

(Signature) (SEAL)

(Name & Title)

WITNESS:

[SURETY] INSURANCE COMPANY

(Name & Title)

(SE
AL)
(Signature)

(Name & Title)

EXHIBIT C
"FORM OF SURETY BOND" – TEMPLATE 2

BOND NUMBER _____

INSURANCE COMPANY
POWER PURCHASE AGREEMENT BOND

KNOW ALL MEN BY THESE PRESENTS, That we
_____ (hereinafter called "Principal"),
and INSURANCE COMPANY authorized to do business in the State of
_____ (hereinafter called "Surety") are held and firmly bound unto
_____ (hereinafter called
"Obligee") as Obligee, for such monetary amount as incurred by the Obligee, not to
exceed the penal sum of
_____ (\$ _____)

DOLLARS, good and lawful money of the United States of America, the payment of which,
well and truly to be made, we do bind ourselves, our heirs, administrators, executors,
successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS the above bounded Principal has entered into a certain written Contract with
the above named Obligee, effective the _____ day of
_____, 20____, for the

_____ which Contract is hereby referred to and made a part hereof as fully
and to the same extent as if copies at length were attached herein.

The obligation of this Performance Bond shall be null and void unless: (1) the above
Contract is in writing, and has been fully executed by both the Principal and the Obligee;
(2) the Principal is actually in default under the above Contract, and is declared by the
Obligee thereafter to be in default; (3) the Obligee has performed all of the obligations of
the Obligee under the Contract; and (4) the Obligee has provided written notice of the
default to the Surety as promptly as possible, and in any event, within ten (10) days after
such default.

The Surety, at the sole election and discretion of the Surety, may take any of the following
actions:

1. With notice to the Obligee, provide financial assistance to the Principal to
remedy any contractual default by the Principal; or
2. Undertake the completion of the above Contract by the Surety, through its
agents or through independent contractors; or
3. Determine the amount for which the Surety may be liable to the Obligee,
and as soon as practicable thereafter, tender payment thereof to the
Obligee; or

4. Pay the full amount of the above penal sum in complete discharge and exoneration of this Performance Bond, and of all liabilities of the Surety relating hereto.

If the Surety so elects to act, all payments and expenditures by the Surety shall be applied against the above penal sum and in reduction of the limit of liability of the Surety.

PROVIDED HOWEVER, that this bond is executed by the Surety and accepted by the Obligee subject to the following expressed conditions:

5. A Reorganization under Chapter 11 of the US Bankruptcy Code by the Principal shall not constitute an event of default recoverable under this bond if they continue to perform their obligations under the Contract.
6. This bond is for the term beginning _____ and expiring _____. The bond will automatically renew for a one year period upon the expiration date set forth above and upon each anniversary of such date, unless at least thirty (30) days prior to such expiration date, or prior to any anniversary of such date, Surety provides written notice to both the Obligee and Principal of its intention to non-renew this bond.
7. Neither non-renewal by the Surety, nor failure, nor inability of the Principal to file a replacement bond shall constitute a default by the Principal recoverable by the Obligee under this bond.
8. Surety's liability under this bond and all continuation certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.
9. No claim, action, suit or proceeding, except as herein set forth, shall be had or maintained against the Surety on this bond unless same be brought or instituted and process served upon the Surety within six months following the expiration of the original term of this bond, or extended term as provided herein.

In the event of conflict or inconsistency between the provisions of this Performance Bond and the provisions of the above Contract, the provisions of this Performance Bond shall control. The Obligee's acceptance of this bond and reliance upon it as security constitutes its acknowledgement and agreement as to the explicit terms stated herein under which it is offered and issued by the Surety.

Sealed with our seals and dated this _____ day of _____, 20____.

WITNESS:

PRINCIPAL:

(Name & Title)

(Signature)

(SEAL)

(Name & Title)

WITNESS:

INSURANCE COMPANY

(Name & Title)

(Signature)

(SEAL)

(Name & Title)

Exhibit D

Production Model Variables and Methodology

The Production Model shall include:

- A. As Built Facility Parameters;
- B. Solar Module Manufacturer PAN file;
- C. Inverter Manufacturer OND file;
- D. Meteorological Station Data (average of the on-site metering equipment):
 - a. Global Horizontal Irradiance;
 - b. Diffuse Irradiance;
 - c. Plane of Array Irradiance;
 - d. Albedo Irradiance;
 - e. Ambient Air Temperature; and
 - f. Wind Speed.
- E. Annual solar panel degradation

The methodology for the Production Model shall be established by the Seller's lender's independent engineer, using the engineer's standard methodology to calculate expected production during each Availability Day. The Production Model shall use the factors above, plus other relevant factors to produce the most accurate results. The Production Model shall be based on solar generation industry standard estimation software, which as of the time of agreement is PVsyst.

EXHIBIT E
Form of
GUARANTY AGREEMENT

This Guaranty Agreement (“Guaranty”) is made and entered into as of the th day of _____, 20__ by _____, a _____ corporation (“Guarantor”), in favor of **LOUISVILLE GAS AND ELECTRIC COMPANY**, a Kentucky corporation, and **KENTUCKY UTILITIES COMPANY**, both a Kentucky and a Virginia corporation, (collectively referred to as the “Beneficiary”).

RECITALS:

F. Guarantor is an affiliate of Rhudes Creek Solar, LLC, a Delaware limited liability company (“Counterparty”).

G. Beneficiary and Counterparty are parties to that certain Power Purchase Agreement dated as of November __, 2019 (as may be amended, the “Agreement”).

H. Beneficiary is obligated to provide certain credit support to Beneficiary pursuant to the Agreement, and Guarantor has agreed to provide such credit support pursuant to this Guaranty.

NOW, THEREFORE, with reference to the above recitals and in reliance thereon, and for other valuable consideration, the mutuality, receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Guarantor agrees with Beneficiary as follows:

1. General. Subject to the provisions of sections 2 and 3 below, Guarantor hereby absolutely and unconditionally guarantees to Beneficiary, its successors and permitted assigns, the due and punctual payment by Counterparty of all amounts which are due or which may hereafter become due to Beneficiary under or pursuant to the Agreement (including, but not limited to, amounts or damages relating to indemnity, default, breach or termination). Any payments made by Guarantor to Beneficiary hereunder shall be made in the lawful money of the United States in the amount(s) required under the Agreement no later than five (5) business days following Beneficiary’s delivery to Guarantor of written notice of Counterparty’s failure to make payments when due under the Agreement and request for payment under this Guaranty.

2. Maximum Liability. THE MAXIMUM AGGREGATE LIABILITY OF GUARANTOR HEREUNDER IS _____.

3. Termination. THE TERMINATION DATE OF THIS GUARANTY IS _____. This Guaranty will continue in full force and effect until such date unless earlier terminated by either party providing 10 days’ notice to the other party; provided however, that termination of this Guaranty shall not affect the validity or enforceability of this Guaranty with respect to (1) any guaranteed obligation incurred or arising prior to the termination of this Guaranty, and (2) any extensions or renewals of,

interest accruing on, or fees, costs or expenses (including attorney's fees) incurred with respect to, such pre-termination obligations on or after termination.

4. No Conditions. This Guaranty is a direct, unconditional, absolute and continuing guaranty of payment (not of collection). Without limiting the generality of the foregoing, Guarantor agrees that this Guaranty is not conditioned upon its receipt of any type of notice except as set forth in Section 1 (including, but not limited to, notice of acceptance of this Guaranty and notice of any sales transactions), and Guarantor hereby waives any right it may otherwise have to same.

5. No Discharge. None of the following shall operate to discharge Guarantor:

5.1 Any modification of the Agreement between Beneficiary and Counterparty;

5.2 Beneficiary's acceptance of any instrument in substitution for any claim or debt;

5.3 Any renewal, extension, modification or substitution of or for any instrument;

5.4 Any leniency or failure to pursue collection by Beneficiary with respect to the Counterparty or Guarantor;

5.5 Any release or impairment of collateral, if any, which secures payment of the Counterparty's obligations to Beneficiary;

5.6 The inclusion by any subsequent separate agreement or by any amendment of this Guaranty at a later date of additional guarantors of the obligations guaranteed hereunder; or the subsequent release of any of same; or

5.7 Any delay of Beneficiary in the exercise of, or failure to exercise, any rights hereunder or under the Agreement, or any single or partial exercise by Beneficiary of any right, remedy or power hereunder or under the Agreement.

6. Restoration. If at any time, any payment made by Counterparty to Beneficiary pursuant to the Agreement is rescinded or must be otherwise restored upon the insolvency, bankruptcy, or reorganization of Counterparty, the Guarantor's obligations hereunder with respect to such payment shall be reinstated at such time as though such payment had not been made.

7. Attorney's Fees. The Guarantor will pay for all Beneficiary's costs incurred in enforcing its rights under this Guaranty, by legal process or otherwise, including, but not limited to, Beneficiary's reasonable attorney's fees.

8. Assignment. This Guaranty is assignable by Beneficiary shall inure to the benefit of Beneficiary, its successors and assigns.

9. Validity. Guarantor represents and warrants to Beneficiary that this Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid and

binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization and similar laws affecting creditors' rights generally, and subject to general principles of equity, including the discretion of a court in granting equitable remedies.

10. Governing Law. Legal rights and obligations hereunder shall be determined in accordance with the laws of the Commonwealth of Kentucky.

11. Defenses. Guarantor waives defenses arising out of (i) the bankruptcy, insolvency, dissolution or liquidation of Counterparty, (ii) ultra vires, lack of capacity, due authorization or authority of Counterparty or its signatories, and (iii) lack of due formation, existence or good standing of Counterparty and any other defenses expressly waived herein or in the Transactions or Confirmations. The Guarantor will not exercise any rights which it may have or acquire by way of subrogation, contribution, indemnity or similar against Counterparty until all amounts due to the Beneficiary hereunder shall have been paid in full.

12. Severability. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

13. Notices. All notices, requests, demands and other communications required or permitted to be made or given under this Guaranty shall be in writing and shall be deemed to have been given (i) on the date of personal delivery, (ii) on the date of deposit in the U.S. Mail, by registered or certified mail, postage prepaid, or (iii) on the date of delivery to a reputable overnight courier service, in each case addressed to the parties as follows:

If to Guarantor, to: _____

If to Beneficiary, to: Louisville Gas and Electric Company/Kentucky Utilities Company
220 West Main Street, 7th Floor
Louisville, Kentucky 40202
Attn: Manager, Credit and Contract Administration
Facsimile: (502) 627-3950

Any party may change its address for receiving notice by written notice given to the other as set forth above.

14. Entire Agreement/No Amendment. The Guaranty constitutes the entire agreement and understanding of the parties hereto respecting its subject matter and supersedes all prior written and contemporaneous oral agreements, representations and understandings relating to its subject matter. No term hereof may be changed, waived, discharged or terminated unless by an instrument signed by the party against whom enforcement is sought.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty on the date shown below.

GUARANTOR

By: _____

Its: _____

Date: _____

AMENDMENT NO. 1 TO POWER PURCHASE AGREEMENT

THIS AMENDMENT NO.1 TO POWER PURCHASE AGREEMENT (this “Amendment”) is entered into, effective as of January 10, 2020 (the “Amendment Effective Date”) by and among (i) **Rhudes Creek Solar, LLC** (“Seller”), a Delaware limited liability company with a principal place of business at c/o ibV Energy Partners LLC, 777 Brickell Ave., Suite 500, Miami, FL 33131, (ii) **Louisville Gas and Electric Company** (“LG&E”), a Kentucky corporation with a principal office at 220 West Main Street, Louisville, Kentucky 40202, and (iii) **Kentucky Utilities Company** (“KU”), a Kentucky and Virginia corporation with its principal office at One Quality Street, Lexington, Kentucky 40507. LG&E and KU are hereinafter referred to collectively as the “Buyers.” Seller and Buyers are sometimes together referred to below as the “Parties.”

WHEREAS, the Parties entered into a Power Purchase Agreement (the “Existing Agreement”) on November 21, 2019; and

WHEREAS, since entering into the Existing Agreement, the Parties have identified typographical errors in the Existing Agreement and desire to amend the Existing Agreement to correct such errors as set forth below.

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

1. **Amendments.** The Existing Agreement is hereby amended effective as of the Amendment Effective Date as follows:
 - a. The headers on pages i, ii, and iii of the Existing Agreement are revised by deleting the words “RS Draft.”
 - b. Section 1.2(B) of the Existing Agreement is revised by deleting the second instance of the word “and.” (Specifically, the word to be deleted is at the end of the second line of Section 1.2(B) of the executed Existing Agreement.)
 - c. The definition of “Availability Underperformance Notice” in Section 1.4 of the Existing Agreement is revised by replacing the reference to Section 8.3(A) with a reference to Section 8.3(B).
 - d. The definition of “Commercial Operation” in Section 1.4 of the Existing Agreement is revised by replacing the reference to Section 4.1 with a reference to Section 4.2.
 - e. The definition of “Early Termination Date” in Section 1.4 of the Existing Agreement is revised by replacing the reference to Section 12.4(B) with a reference to Section 12.4(A).
 - f. The definition of “Test Energy” in Section 1.4 of the Existing Agreement is revised by replacing the reference to Section 4.2 with a reference to Section 4.3.
 - g. Section 8.1(B) of the Existing Agreement is revised by replacing the reference to Section 4.2 with a reference to Section 4.3.
 - h. Section 8.3(D) of the Existing Agreement is revised by replacing both references to Section 8.3(A) with references to Section 8.3(B).

- i. Section 9.1(C) of the Existing Agreement is revised by replacing the reference to Section 4.2 with a reference to Section 4.3.
 - j. Section 10.2(C) of the Existing Agreement is revised by replacing the reference to Section 4.2 with a reference to Section 4.3.
2. **Status of Contract.** As amended hereby, the Existing Agreement shall continue in full force and effect.
3. **Miscellaneous.** This Amendment shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. This Amendment shall be binding upon and inure to the benefit of the Parties and their respective successors in interest, legal representatives, and assigns permitted under the Existing Agreement. This Amendment may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument. This Amendment constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date(s) below written, but effective as of the Amendment Effective Date.

[remainder of this page intentionally left blank]

Seller:

Rhudes Creek Solar, LLC

By: 

Name: Timothy C. Kim

Title: President

Date: January 13, 2020

Buyer:

Louisville Gas and Electric Company

By: _____

Name: _____

Title: _____

Date: _____

Kentucky Utilities Company

By: _____

Name: _____

Title: _____

Date: _____

Seller:

Rhudes Creek Solar, LLC

By: _____

Name: _____

Title: _____

Date: _____

Buyer:

Louisville Gas and Electric Company

By: David S. Sicular

Name: David S. Sicular

Title: VP Energy Supply & Analysis

Date: 1-10-20

JD

Kentucky Utilities Company

By: David S. Sicular

Name: David S. Sicular

Title: VP Energy Supply & Analysis

Date: 1-10-20

JD