

**RENEWABLE POWER AGREEMENT**  
**BETWEEN**  
**KENTUCKY UTILITIES COMPANY**  
**AND**  
**DOW SILICONES CORPORATION**  
**JANUARY 10, 2020**

**CONFIDENTIAL INFORMATION REDACTED**

**RENEWABLE POWER AGREEMENT**

This **RENEWABLE POWER AGREEMENT** (“**Agreement**”) is entered into as of January 10, 2020 (“**Effective Date**”), by and between **Kentucky Utilities Company** (“**KU**”), a corporation organized and existing under the laws of the Commonwealth of Kentucky, (the “**Company**”), and **Dow Silicones Corporation**, a corporation formerly known as Dow Corning Corporation and organized and existing pursuant to the laws of the State of Michigan (the “**Dow**”). **Company** and **Dow** will individually be referred to as a “**Party**” and collectively as “**Parties.**”

**WITNESSETH:**

**WHEREAS**, **Dow** owns and operates a manufacturing facility located at 4770 Highway 42 E, Carrollton, Kentucky 41008 (the “**Dow Location**”).

**WHEREAS**, **Dow** purchases its electric power supply for the **Dow Location** from **Company** and desires to contract with **Company** for the purchase of electric energy produced from a solar powered electric generating resource; and

**WHEREAS**, **Company** has arranged for the purchase of electric energy from a specific solar-powered renewable resource (the “**Renewable Resource**”) under a separate Power Purchase Agreement between **Company** and the owner of the **Renewable Resource** (the “**PPA**”).

**WHEREAS**, **Company** will purchase and deliver to **Dow** such electric energy from the **Renewable Resource** for use in its manufacturing facility at the **Dow Location**.

**NOW, THEREFORE**, in consideration of the premises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the **Parties**, each intending to be legally bound, agree as follows.

**I. SOLAR POWERED ELECTRIC GENERATION**

**1.1 Company’s Procurement of Solar-Powered Electric Generation.** On **Dow’s** behalf and for its benefit, and at **Dow’s** request, **Company** will purchase energy from the **Renewable Resource** under the **PPA**. The **Renewable Resource** will be a solar photovoltaic system located in Kentucky and will be interconnected to **Company’s** transmission system. It will have a nameplate AC capacity rating of not less than [REDACTED] and not more than 100 MW. The output of the solar photovoltaic system will be non-firm, as-available energy, delivered to **Company’s** transmission system under the **PPA** and measured as described in Section 2.2 below (the “**Renewable Energy**”). The **PPA** has a term continuing until the twentieth (20<sup>th</sup>) anniversary of commercial operation of the **Renewable Resource**.

**1.2 Existing Contract for Electric Service.** **Company** currently serves the **Dow Location** with electric service pursuant to a Contract for Electric Service dated [REDACTED] with Contract Capacity of [REDACTED] kW, or kVA as appropriate (the “**Existing Contract**”). The **Existing Contract** shall remain in place and shall continue to be effective. This Agreement shall be supplemental to the **Existing Contract**. The obligations of the **Parties** to this Agreement, including without limitation the Term commitment as set forth in Section 1.5 below, are in addition to the **Parties’** obligations under the **Existing Contract**,

and shall continue until termination of this Agreement irrespective of any earlier termination of the Existing Contract.

- 1.3 Application of Green Tariff.** This Agreement is pursuant to and in accordance with the Company's Tariff on file with the Commission (the "**Tariff**") and, more specifically, Option #3 available under Standard Rate Rider GT set forth in the Tariff (the "**Green Tariff**"). Capitalized terms used but not defined in this Agreement have the meanings set forth in the Tariff.
- 1.4 PPA Pricing.** The PPA provides for a per-kWh rate of \$0.02782 per kWh. Such rate is equal to the Renewable Energy Charge defined below, which will, except to the extent the Discount Renewable Energy Charge defined in Section 2.7(c) is applicable, be passed through to Dow and, along with tariffed demand charges (subject to the offsets described below) and tariffed standard rate components, paid by Dow to Company under this Agreement. The integration of the PPA pricing for the Renewable Energy into the Existing Contract rates is further described below.
- 1.5 Term.** This Agreement and the PPA are subject to the further approval of the Kentucky Public Service Commission ("**Commission**") as set forth herein, and the purchase and sale of Allocated Renewable Energy and Allocated RECs shall not commence until such approval by the Commission. Subject to such approval, this Agreement is effective on the Effective Date, and the purchase and sale of Allocated Renewable Energy and Allocated RECs will, also subject to such approval, commence on the date of Company's written notice to Dow of commercial operation of the Renewable Resource ("**Commencement Date**"). The Agreement will terminate the earliest of (i) the twentieth (20<sup>th</sup>) anniversary of the Commencement Date, (ii) the termination of this Agreement pursuant to Section 2.4 below, or (iii) the date, if any, on which Company notifies Dow that the PPA has been terminated ("**Term**").
- 1.6 Dow's Share of Energy Generated by Renewable Resource.** Company will deliver to Dow, and Dow shall purchase on the terms set forth below, twenty-five percent (25%) of the Renewable Energy (the "**Allocated Renewable Energy**"). To the extent the Allocated Renewable Energy is in excess of Dow's energy usage, Section 2.8 below shall apply.

## **II. SALE OF POWER, RATES, BILLING, PAYMENT**

- 2.1 Sale of Electricity.** Subject to the terms and conditions of this Agreement, the Existing Contract, and the Tariff, including the Green Tariff, Company shall sell to Dow and Dow shall buy from Company all electric energy required by Dow at the Dow Location. Company shall sell such electric energy to Dow in compliance with all requirements of Company. The electric energy shall be provided from Company's electric system to Dow at the location of Company's meters on the Dow's Location.
- 2.2 Measurement of Renewable Resource Output.** The electric energy produced by the Renewable Resource shall be measured at the Renewable Resource meter point at the interconnection point to the Company's electric system. Such measurement shall be in terms of kWh during the same intervals used for billing under the Existing Contract ("**Contract Billing Intervals**").

- 2.3 Limits of Obligation to Deliver. Company does not warrant or guarantee the amount of electric energy to be produced by the Renewable Resource for any hourly, daily, monthly, annual or other period or any cumulative amount. Dow acknowledges that the electric energy produced by the solar electric facility is dependent upon the availability of sufficient sunlight to produce electric energy, and that no or limited amounts of electric energy will be produced by the Renewable Resource when sufficient sunlight is unavailable.
- 2.4 Regulatory Approval; Confirmation of Condition Precedent. This Agreement and the PPA are subject to the jurisdiction and approval of the Commission. Company shall make application at Company's cost for all necessary regulatory approvals, including approval by the Commission, within sixty (60) days of the execution of this Agreement by Company and Dow. Due to uncertainty as to the timing of such approvals and the potential for such approvals to be subject to varying conditions, the delivery by each Party to the other Party of a written notice stating that the Party delivering such notice does not object to any conditions of such approvals (a "CP Confirmation Notice") shall be a condition precedent to the purchase or sale of any Renewable Energy or RECs under this Agreement. A Party's determination as to whether to deliver a CP Confirmation Notice shall be at such Party's sole discretion. Should either Party or both Parties fail to deliver a CP Confirmation Notice to the other on or before March 31, 2020, either Party may deliver a termination notice to the other Party with such termination effective on the date thirty (30) days following such notice unless, before such date, both Parties have delivered to each other CP Confirmation Notices.
- 2.5 Renewable Energy Certificates. Under the PPA, Company will obtain all Renewable Energy Certificates ("RECs") attributable to the Renewable Energy. Company will transfer to Dow all RECs attributable to the Allocated Renewable Energy ("Allocated RECs") without additional charges. All Allocated RECs will be registered with (i) the Generation Attribute Tracking System ("GATS") administered by PJM Environmental Information Services ("PJM EIS"), (ii) the MISO's Midwest Renewable Energy Tracking System ("MRETS"), or (iii) another proven renewable asset tracking system associated with the major regional Independent System Operators (ISO). Dow and Company shall cooperate to obtain any and all required approvals and consents that may be required to effectuate deposits and retirements concerning the Allocated RECs under the applicable governing rules. Except as provided below in this Section 2.5, the transfer of RECs will be without cost to Dow. In the event the tracking system begins to charge Company out-of-pocket fees to effectuate transfers of RECs, Company will promptly submit to Dow a written notice setting forth (i) how such fees are determined; (ii) the manner in which such fees increase Company's costs; and (iii) Company's proposed terms for allocating the costs of such fees between Company and Dow. Dow may, within thirty (30) days of such notice from Company, submit to Company a written notice accepting or rejecting the terms for allocation of such fees proposed in Company's notice. In the event Dow rejects the terms for allocation of such fees proposed in Company's notice, Company may terminate this Agreement by thirty (30) days' written notice to Customer, without liability to Dow. If Dow rejects the terms for allocation of such fees proposed in Company's notice stating such proposed allocation, and Company does not terminate, the transfers of RECs will continue to be without cost to Dow. If Dow accepts or does not reject the allocation proposed by Company as described above in this Section 2.5, Dow agrees to such allocation.

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- 2.6 Company's Terms and Conditions.** This Agreement is subject to the terms and conditions contained in the Tariff, including the Green Tariff. Should there be any conflict in the Tariff terms and conditions and this Agreement's terms and conditions, the terms of this Agreement shall, following approval of this Agreement by the Commission, prevail.
- 2.7 Rates.** Dow shall pay Company for its services during the Term pursuant to this Agreement at the rates set forth in Dow's applicable Tariff [REDACTED] the Green Tariff, and this Agreement, as set forth below:
- (a) Pursuant to the [REDACTED] Tariff and the Existing Contract, Dow's rates include a Basic Service Charge per day, plus an Energy Charge per kWh, plus a Maximum Load Charge per kVA for Dow's Peak Demand Period, Intermediate Demand Period, and Base Demand Periods, and Adjustment charges as described in the [REDACTED] Tariff and the Existing Contract.
  - (b) Renewable Energy Charge. In addition, Dow will pay Company the Renewable Energy Charge of \$0.02782 per kWh for all Allocated Renewable Energy other than Discount Renewable Energy as defined in Section 2.7(c). The Energy Charge (as such term is used in the Tariff) for all kWh of energy delivered to Dow in excess of the Allocated Renewable Energy delivered to Dow shall be equal to the Energy Charge in the Existing Contract. The Renewable Energy Charge and, to the extent otherwise applicable, the Discounted Renewable Energy Charge shall be applicable throughout the Term of this Agreement and shall remain applicable during the Term even if the Existing Contract terminates.
  - (c) Discounted Renewable Energy. To the extent the Renewable Energy in any calendar year exceeds [REDACTED] kWh, all Renewable Energy in excess of such amount during such calendar year shall be treated as "Discounted Renewable Energy" in accordance with this Section 2.7(c). Discounted Renewable Energy, if any, shall be allocated to Dow in the same percentage as other Renewable Energy and shall, to the extent so allocated to Dow, be included in Allocated Renewable Energy. Dow will pay Company \$0.01391 per kWh (the "Discounted Renewable Energy Charge") for any Discounted Renewable Energy included in Allocated Renewable Energy, with such Discounted Renewable Energy Charge paid in lieu of the Renewable Energy Charge with respect to such Discounted Renewable Energy. All Allocated Renewable Energy other than Discounted Renewable Energy shall continue to be subject to the Renewable Energy Charge.
  - (d) Energy Offsets. Each kWh of Allocated Renewable Energy in a Contract Billing Interval shall be offset against the kWh of Dow's energy usage on which the Energy Charge for such Contract Billing Interval is based under the Existing Contract, so that Dow is not subjected to two Energy Charges for the same kWh used.
  - (e) Peak and Intermediate Demand Charge Offsets. To the extent the Allocated Renewable Energy is coincident with Dow's energy usage during each 15-minute interval, Dow's Peak and Intermediate Demands under the Existing Contract will be reduced by the amount of Allocated Renewable Energy delivered to Company in the respective 15-

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- minute interval. The resultant demands for all 15-minute intervals in the billing period will only be used in calculating Peak and Intermediate Demand Charges under the Existing Contract.
- (f) Base Demand Charges. Dow's Base Demand, which covers [REDACTED] charges, will not be reduced based on Allocated Renewable Energy since it must be delivered to Dow. Dow will pay a [REDACTED] Charge equal to the Maximum Load Charge during the Base Demand Period of the Existing Contract.
  - (g) Standard Rate Components. Rates shall include standard rate components, *e.g.*, basic service charges and cost-recovery mechanisms as though Dow purchased all of its energy and demand under its applicable standard Tariff rate schedule(s). Such standard rate components may change from time-to-time as required or approved by the Commission. Charges and credits for adjustments to metered load will appear as separate line items on bills under the Existing Contract. Bill adjustments may need to be reviewed and modified after any future rate design modifications approved by the Commission.
  - (h) Should the rate schedule of most predominant application to Dow (currently [REDACTED]) change during the Term, the rates applicable to the succeeding rate schedule of most predominant application to Dow shall be used for calculating the Existing Contract rates, but not the Energy Charge for Allocated Renewable Energy, under this Agreement.

**2.8 Excess Allocated Renewable Energy.** Dow will receive a bill credit (credited against charges under the Existing Contract and this Agreement) from Company for all Allocated Renewable Energy delivered to Company in excess of Dow's energy usage during the same Contract Billing Intervals as defined above ("**Excess Renewable Energy**"). The total billing period credit will be calculated as the Company's avoided energy cost ("**AEC**") rate as described in Company's LQF tariff rider multiplied by the total amount of Excess Renewable Energy for all Contract Billing Intervals within the billing period.

**2.9 Performance Security.** [REDACTED]

**2.10 Billing.** Dow will be billed monthly under the Green Tariff. Such billing will be added to Dow's billing under any standard rate schedules plus applicable riders plus applicable adjustment clauses. Company shall include in Dow's monthly invoice the quantity of Allocated Renewable Energy, the applicable energy and demand offsets for such, any Excess Renewable Energy received, and the Existing Contract charges. Upon Dow's request, which may not be more frequent than once per year, Company shall provide Dow with information sufficient for Dow to verify for the most recent 24-month period, the Renewable Energy produced by the Renewable Resource and the credits earned by Dow. Dow also may request such information in connection with any *Force Majeure* Event or in the event of any default by Company in its obligations under this Agreement. In the event the Existing Contract is terminated prior to the end of the Term of this Agreement, Dow shall maintain a billing

address for the remainder of such Term, which, in addition to serving as a billing address, shall serve as a payment address in the event credits under Section 2.8 exceed amounts owed by Dow under Sections 2.7(b) and 2.7(c).

- 2.11 Payment.** Subject to any applicable requirements of the Commission, Dow shall pay each invoice within the time specified on the invoice according to Company's normal billing practices. Payments shall be made by electronic funds transfer to an account designated by Company in the invoice or in a written notice delivered to Dow. Any amounts not paid when due, including any amounts properly disputed and later determined to be owed, shall accrue late fees as set forth in the Tariff.
- 2.12 Full-Requirements Purchase.** Throughout the Term, Dow shall receive from Company, and pay to Company for all its electric energy requirements at the Dow Location pursuant to Company's applicable Tariff. Dow may install its own electric generation equipment "behind the meter" but shall remain responsible for its purchase obligations under this Agreement and under the Existing Contract including without limitation the demand charges associated with its Contract Capacity. Company shall be required to provide, without regard to the operation of or output of the Renewable Resource, Dow's full electric energy requirements at the Dow Location.
- 2.13 Renewable Resource Design and Equipment.** Company does not warrant the Renewable Resource including but not limited to design, equipment, or output. Dow acknowledges that no warranty exists with respect to the efficacy, efficiency, or life expectancy of the Renewable Resource and Company disclaims any and all such warranties. Dow acknowledges that technological advances, changing market conditions, and actions of governmental authorities may affect the economic or operating bases on which the Renewable Resource's economics are based. Company disclaims all implied warranties with respect to the Renewable Resource, including, without limitation, warranties of merchantability and fitness for a particular purpose.
- 2.14 Ownership of Tax Attributes.** The PPA does not provide for Company to receive any tax credits or similar tax incentives that may arise as a result of the operation of the Renewable Resource ("**Tax Attributes**"). However, in the event Company receives any Tax Attributes under the PPA, Company shall be the owner of such Tax Attributes and shall be entitled to transfer such Tax Attributes, if any, to any person.
- 2.15 No Assignment.** This Agreement shall not be resold, assigned or otherwise transferred by either Party without the other Party's prior written consent, which prior written consent shall not be unreasonably withheld. Customer, however, may assign this Agreement to a creditworthy affiliate, and Company may assign this Agreement to any entity that, following approval of such actions by the Commission, becomes the supplier of electric service to the Dow Location and assumes all of Company's responsibilities under this Agreement
- 2.16 Sales Taxes.** Dow shall be responsible for all taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any

administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal (“**Governmental Authority**”), on the sale of electric energy by Company to Dow.

### III. MISCELLANEOUS

- 3.1 Excuse of Force Majeure Event.** Subject to the second sentence of this Section, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a *Force Majeure* Event (as defined below). The Party claiming relief as a result of the *Force Majeure* Event shall promptly (i) notify the other Party in writing of the existence and details of the *Force Majeure* Event; (ii) exercise all reasonable efforts to minimize delay caused by such *Force Majeure* Event; (iii) notify the other Party in writing of the cessation of such *Force Majeure* Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter. For purposes of this Agreement, “**Force Majeure Event**” means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party. Subject to the foregoing, *Force Majeure* Events may include but are not limited to the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of Governmental Authority, acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) equipment failure or unavailability or delay in receiving equipment, parts, or supplies, and (v) strikes or labor disputes. Changes in prices for electricity or inability to pay amounts required under this Agreement shall not constitute *Force Majeure* Events.
- 3.2 Change in Law.** In the event there is a Change in Law (as defined below) that is applicable to the operation of the Renewable Resource, the sale of electric energy produced by the Renewable Resource, or any other obligation of the Company hereunder, and compliance with the Change in Law results in an increase in Company’s costs to purchase, transmit, and deliver the Allocated Renewable Energy to Dow, Company will promptly submit to Dow a written notice setting forth (i) the applicable Change in Law; (ii) the manner in which such Change in Law increases Company’s costs; and (iii) Company’s proposed adjustment to the then applicable and future rates for electric energy in this Agreement to reflect such increases in costs. Dow may, within thirty (30) days of such notice from Company, submit to Company a written notice accepting or rejecting the adjustment proposed in Company’s notice. In the event Dow rejects Company’s adjustment, Company may terminate this Agreement by thirty (30) days’ written notice to Customer, without liability to Dow. If Dow rejects Company’s adjustment and Company does not terminate, then there will be no price adjustment. If Dow accepts or does not reject the adjustment proposed by Company as described above in this Section 3.2, Dow agrees to an adjustment in the then applicable rates. “**Change in Law**” means an amendment, modification, or other change of applicable law, regulation, order or ordinance, enacted, adopted, issued, or promulgated by a Governmental Authority after the date first written above.



- 3.3 LIMITATION ON DAMAGES.** Except as explicitly provided in this Agreement, neither Party shall be liable to the other Party for any special, punitive, exemplary, indirect or consequential damages arising out of or in connection with this Agreement.
- 3.4 Dispute Resolution. Exclusive Procedure.** Any dispute, controversy, or claim arising out of or relating to this Agreement or the breach, interpretation, termination, performance, or validity of this Agreement (each, a “**Dispute**”) shall be resolved pursuant to the procedures of this Agreement.
- 3.5 Dispute Notice.** If a Dispute arises between Company and Dow, then any Party to such Dispute (each, a “**Disputing Party**”) may provide written notice thereof to the other Disputing Party, including a detailed description of the subject matter of the Dispute (the “**Dispute Notice**”). Any Disputing Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case the Disputing Parties nonetheless will continue to pursue resolution of the Dispute pursuant to this Agreement. Notwithstanding any provision to the contrary contained in this Agreement, in no event shall any Party be entitled to bring a Dispute arising under this Agreement more than four (4) years after such Party knew or reasonably should have known of the facts or circumstances giving rise to the Dispute or, in the case of a Dispute with respect to any invoice, more than two (2) years after the date of the invoice. If information from the Renewable Resource with respect to the basis for charges and credits on an invoice is not available for the entirety of the 4-year or 2-year time periods prescribed in the preceding sentence, the absence of such information shall not be held against Company in a Dispute. For purposes of the immediately preceding sentence, information from the Renewable Resource does not include information from meters used by Company to measure Renewable Energy entering Company’s transmission system.
- 3.6 Informal Dispute Resolution.** To the extent consistent with KRS Chapter 278, the Disputing Parties shall make a good faith effort to resolve the Dispute by prompt negotiations between or among each Disputing Party's representative so designated in writing to the other Disputing Party or Disputing Parties (each, a “**Manager**”) who shall have authority to settle the Dispute. If the Managers are not able to resolve the Dispute within sixty (60) days after the date of the Dispute Notice, then the Parties will be permitted to seek their rights and remedies permitted in law and equity. These provisions shall survive any termination of this Agreement.
- 3.7 Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Kentucky, including principles of good faith and fair dealing that will apply to all dealings under this Agreement without regard to the conflicts of laws principles of such state. The United States District Court for the Eastern District of Kentucky located in Lexington, Kentucky, or the Carroll County (Kentucky) Circuit Court, shall have exclusive jurisdiction and venue of any legal action arising out of this Agreement, and each Party submits to the exclusive jurisdiction of such Court. Disputes or other matters which are within the exclusive jurisdiction of the Commission under KRS Chapter 278 shall remain subject to adjudication by the Commission in lieu of the aforementioned Courts.

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**3.8 Forward Contract.** Company and Dow agree that, for the purpose of this Agreement, Company is a forward contract merchant and that this Agreement is a forward contract and commodity contract.

**3.9 Notices.** A CP Confirmation Notice shall be deemed properly given if sent to the address of such Party set forth below via nationally recognized overnight courier. Any other notice required by this Agreement to be made to a Party may be made in the same manner as a CP Confirmation Notice or by electronic mail to the e-mail address set forth below for the recipient. A Party may change its notice address by written notice to the other Party.

3.9.1 If to Company:  
LG&E and KU  
One Quality Street  
Lexington, KY 40507  
Attn: Joseph Howard, Key Account Manager  
E-Mail: [REDACTED]

Copy to:  
LG&E and KU  
c/o Legal Department 11<sup>th</sup> Floor  
220 West Main Street  
Louisville, KY 40202

3.9.2 If to Dow:  
Dow Silicones Corporation  
1254 Enclave Parkway  
Houston, TX 77077  
Attn: Energy Commercial Manager  
E-Mail: [REDACTED]

**3.10 Headings.** Headings are for convenience only and do not affect this Agreement's interpretation.


**3.11 Counterparts.** This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument.

Intending to be legally bound hereby, Company and Dow have executed this Renewable Energy Agreement as of the Effective Date.

**Company:**

**Kentucky Utilities Company**

By:

  
Paul W. Thompson

Printed Name

CEO; President

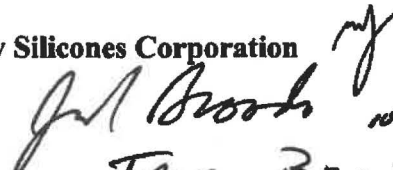
Title

*JD*

**Dow:**

**Dow Silicones Corporation**

By:

 10 JAN 20  
JACK BROUDO

Printed Name

President P&E

Title