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EXCLUSIVITY AGREEMENT

This Exclusivity Agreement (this "Agreement") is made and dated as of December 12, 2022 (the "Effective Date"), by and among FRON bn, LLC, a Delaware limited liability company ("BrightNight" or "Seller"), Louisville Gas and Electric Company, a Kentucky corporation ("LG&E"), Kentucky Utilities Company, a Kentucky and Virginia corporation ("KU"), and together with LG&E, "Buyer"). Buyer and BrightNight may each be referred to herein as a "Party", and, collectively, as the "Parties".

RECITALS

A. BrightNight is currently developing a ground-mount single axis tracking solar photovoltaic electric generating facility with an anticipated nameplate capacity of 120 MWac (the "Project"), which will be located in Washington and/or Marion Counties, Kentucky along Kentucky Route 55 in the vicinity of the Lebanon- Springfield Airport, and as further specified in Exhibit B.

B. The Parties desire to engage in a potential transaction whereby the Parties would execute (or cause their affiliates to execute) a build transfer agreement (the "BTA"), that provides for BrightNight to sell to Buyer, and Buyer to purchase from BrightNight, the assets exclusively related to the Project once the Project is substantially complete (the "Proposed Transaction"), as further described in the term sheet attached hereto and incorporated by reference as Exhibit A (the "Term Sheet").

C. WHEREAS, in order to allow Buyer and its advisors to complete their confirmatory due diligence and to provide an opportunity for the Parties to conduct effective discussions and negotiations regarding the Proposed Transaction, the Parties desire that BrightNight provide Buyer with a period of exclusivity, as further described below.

NOW, THEREFORE, in consideration of the time, expense, and resources the Parties are and will be expending in the discussions and negotiations related to the Proposed Transaction and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Exclusivity. Seller agrees that it shall not, and shall cause its affiliates, managers, officers, directors, subsidiaries, representatives and agents to not, with respect to the Project, from the Effective Date until 5:00 PM prevailing Eastern Time on January 31, 2023 (the "Exclusivity End Date"), and the period from the Effective Date until the Exclusivity End Date, as may be extended, the "Exclusivity Period"), directly or indirectly solicit, participate in or initiate, and shall discontinue any, discussions or negotiations with any third party, and will not provide any information to or engage in any transaction with, any person or entity other than Buyer (and its affiliates) concerning the Proposed Transaction or other disposition of the Project or any assets exclusively related to the Project including the output of and products produced by the Project. For the avoidance of doubt, the foregoing shall not prevent BrightNight and its affiliates from pursuing ordinary course development activities with respect to the Project. Also for the avoidance

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of doubt, the foregoing shall not prevent Buyer and its affiliates from pursuing opportunities similar to the Proposed Transaction or the Project. The Exclusivity End Date may be extended by mutual written agreement of the Parties.

2. Due Diligence. Prior to the execution of Definitive Agreements (as defined below), BrightNight and its affiliates shall permit Buyer and its affiliates (and its and their representatives) to review the assets, liabilities, and development activities related to the Project (the “Project Assets”). BrightNight and its affiliates shall make their relevant representatives reasonably available to discuss with Buyer and its affiliates (and its and their representatives) such aspects of the Project.

3. Binding Effect. Each Party hereby represents and warrants to the other Party that it has the full legal right and authority to execute and deliver and perform fully its obligations under this Agreement. Excluding the terms and provisions of the Term Sheet, the provisions of this Agreement are legally binding upon and enforceable against the Parties, in each case to the extent of such Party’s rights and obligations thereunder. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge that (a) there are material provisions of the Proposed Transaction that have not yet been negotiated or agreed and that neither Party will have any rights or any legally binding obligations with respect to the Proposed Transaction (other than related to the binding provisions of this Agreement) unless and until all necessary approvals are secured related to the Definitive Agreements, including but not limited to approval from each Party’s respective management, board of directors and/or other governing body, as applicable, and the Definitive Agreements are executed and delivered by the Parties, and (b) nothing in this Agreement is intended to create any legally binding obligation on the part of either Party to enter into the Definitive Agreements or to consummate the Proposed Transaction, except on terms that may be acceptable to the Parties, each acting in its sole and absolute discretion.

4. Negotiation of Definitive Agreements. During the Exclusivity Period, BrightNight and Buyer will negotiate in good faith the BTA and such other definitive documents (collectively, the “Definitive Agreements”), as may be required to consummate the Proposed Transaction.

5. Cost. All costs and expenses related to this Agreement, including attorneys’ fees, financial advisor fees, accounting fees, broker or finders’ fees and other professional fees and expenses, shall be borne by the Party that incurred such costs or expenses regardless of whether or not the Definitive Agreements are executed and delivered by the Parties or the Proposed Transaction is consummated. For the avoidance of doubt, the foregoing shall not prevent the Parties from including in the Definitive Agreements customary provisions allocating taxes and other costs or expenses related to the Proposed Transaction.

6. Limitation of Liability. In no event shall any Party or any of their respective officers, directors, members, partners, shareholders, employees, agents or affiliates be liable for any special, indirect, non-compensatory, consequential, incidental, punitive or exemplary damages of any type, including lost profits, loss of business opportunity or business interruptions irrespective of whether such damages are reasonably foreseeable or whether such claims arise in contract, tort (including negligence, whether sole, joint, or concurrent or strict liability) or otherwise, arising out of this Agreement.

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7. Term. This Agreement shall be effective as of the Effective Date and terminate on the earliest to occur of: (a) the expiration of the Exclusivity Period; (b) the execution of the Definitive Agreements; (c) the mutual written agreement of the Parties to no longer proceed with the negotiation of the terms of the Definitive Agreements; (d) the delivery of a termination notice by Buyer to Seller indicating that Buyer is no longer interested in consummating the Proposed Transaction; or (e) written notice from a Party if the other Party is in material default of any of its obligations set forth herein.

8. Confidentiality. Neither Party shall disclose the terms and conditions of this Agreement, the existence of this Agreement, or information received (written or verbal) from the other Party in the negotiation of the Proposed Transaction or otherwise related to this Agreement or matters related hereto, to a third party (other than either Party's affiliates, employees, lenders, counsel, accountants, advisors, consultants, representatives, or ratings agencies) except in order to comply with any applicable law; provided, however, that each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. Notwithstanding the foregoing, Buyer and its affiliates may, and fully expect to, provide copies of this Agreement to the Kentucky Public Service Commission in connection with an application for a Certificate of Public Convenience and Necessity. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

9. Notices. All communications between the Parties regarding the Proposed Transaction should be addressed to the following:

If to BrightNight:

c/o BrightNight, LLC
515 N Flagler Dr, Suite P-200
West Palm Beach, FL 33401
Email: legal@brightnightpower.com

If to Buyer:

LG&E and KU Energy LLC
220 W. Main St.
Louisville, KY 40202
Attn: Charles R. Schram, Director – Power Supply
Email: chuck.schram@lge-ku.com

With a copy to:

PPL Services Corporation
220 W. Main St.
Louisville, KY 40202
Attn: James J. Dimas, Senior Corporate Attorney
Email: JJDimas@pplweb.com

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10. Miscellaneous. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures by electronic transmission (in PDF or similar format) shall be binding. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky without regard to its conflicts of law provisions. The Parties irrevocably agree that the federal or state courts sitting in Jefferson County, Kentucky shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with Agreement, its subject matter or formation. This Agreement may not be amended in whole or in part, except by a written instrument duly executed by all Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. No Party may assign this Agreement or its respective rights and obligations hereunder without the prior written consent of the other Party; provided, that either Party may assign this Agreement and its rights and obligations hereunder to any affiliate that will be party to the BTA without the prior written consent of the other Party. For the avoidance of doubt, such an assignment to an affiliate without the prior written of the other Party shall not obligate the non-assigning party to enter into the BTA with the assignee.

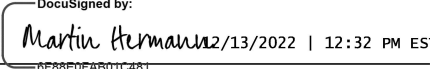
[Signature pages follow]

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

BRIGHTNIGHT:

FRON bn, LLC

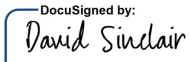
By:  DocuSigned by:
Martin Hermann 2/13/2022 | 12:32 PM EST
Name: Martin Hermann
Title: Director

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 DS
JD

BUYER:

Louisville Gas and Electric Company

DocuSigned by:
By:  12/13/2022 | 6:43 PM EST
Name: David S. Sinclair
Title: VP – Energy Supply & Analysis

Kentucky Utilities Company

DocuSigned by:
By:  12/13/2022 | 6:43 PM EST
Name: David S. Sinclair
Title: VP – Energy Supply & Analysis

[Signature Page to Exclusivity Agreement]

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EXHIBIT A

BUILD TRANSFER AGREEMENT

TERM SHEET

This term sheet (the “Term Sheet”) is part of and incorporated by reference in the Exclusivity Agreement to which it is attached (the “Agreement”). This Term Sheet includes indicative terms and conditions that are intended to serve as the basis for negotiations of the Definitive Agreements. The Term Sheet does not address all matters upon which agreement must be reached in order for the Definitive Agreements to be negotiated, finalized and executed. Unless and until the Definitive Agreements have been executed and delivered by the Parties, no Party will be under any legal obligation of any kind whatsoever by virtue of this Term Sheet with respect to the proposed transaction. Capitalized terms used but not defined in this Term Sheet have the meanings set forth in the Agreement.

Notwithstanding this Term Sheet or any past or future discussions or other communications between the Parties, no Party will have an obligation to enter into the BTA or any other Definitive Agreements. If either Party chooses to rely to its detriment on the expectation that the other Party will, in fact, enter into the BTA or any other Definitive Agreements, such reliance is undertaken at that Party’s sole risk.

Term	Summary
Seller	FRON bn, LLC, a wholly owned subsidiary of BrightNight, LLC
Buyer	Louisville Gas and Electric Company and Kentucky Utilities Company, on a several but not joint basis
Project	The “ Project ” will be a ground-mount, single axis tracker, solar photovoltaic electric generating facility with an anticipated nameplate capacity of 120 MWac (the “ Planned Solar Capacity ”) located in Washington and/or Marion Counties, Kentucky.
Transaction Overview	Following the date upon which the closing conditions in the BTA have been achieved, including that the Project has achieved Substantial Completion (such date, the “ Closing Date ”), Seller will sell to Buyer all the Project Assets (as defined below), on the terms set forth in the BTA. On the Closing Date, Buyer will assume all liabilities relating to or arising from the ownership, operation, maintenance or use of the Project and the Project Assets (as defined below) following the Closing Date, other than any liabilities arising from Seller’s breach of the BTA.

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	<p>“Substantial Completion” will have the meaning given to such term in the EPC Agreement, which definition will include that the EPC Contractor has completed all work under the EPC Agreement such that (i) the Project may be operated as a fully-integrated photovoltaic electricity generating facility that is fully and properly interconnected and synchronized with the electrical grid; (ii) the Project is capable of transmitting electricity on a continuous basis in accordance with all specifications and the requirements of the EPC Agreement; (iii) either (A) the Project has an aggregate installed nameplate capacity no less than Planned Solar Capacity or (B) the Project has an aggregate installed nameplate capacity no less than ninety percent (90%) of Planned Solar Capacity and the Purchase Price has been reduced by the Buydown Amount; and (iv) if any work not necessary to satisfy items (i), (ii) and (iii) of this definition has not been completed, such work has been identified on a mutually agreed punch list.</p>
<p>Project Assets</p>	<p>The “Project Assets” will include all assets, properties, rights, and interests of every kind, nature, character, and description (whether real, personal, or mixed, and whether tangible or intangible), (i) Major Project Equipment and other assets identified as Project Assets in a schedule to the BTA and/or (ii) owned or leased by, or licensed to, Seller as of the Closing Date, in each case which are exclusively related to, or are exclusively used or held for use in connection with the development, construction, operation, maintenance, repair, ownership or use of the Project, other than any assets which the parties have expressly agreed in the BTA will not be transferred to Buyer on the Closing Date (including, but not limited to, any shared facilities).</p>
<p>Purchase Price; Payment of Purchase Price</p>	<p>The “Purchase Price” for the Project will be equal to [REDACTED] and will be paid by Buyer to Seller on the Closing Date.</p> <p>The Purchase Price includes the cost of non-reimbursable interconnection network upgrades for the Project but does not include the cost of reimbursable interconnection network upgrades for the Project, which will be paid by Buyer to Seller in full on the Closing Date.</p>
<p>Purchase Price Adjustments</p>	<p>The Purchase Price will be subject to adjustment as set forth in the BTA, which may include, without limitation, adjustments to reflect: (1) increased costs incurred by Seller as a result of Excusable Events (defined below); (2) the Buydown Amount (as defined below) if any; and (3) any Buyer-requested change orders.</p>

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	<p>If the aggregate installed nameplate capacity of the Project is less than the Planned Solar Capacity as of the date on which the Project achieves Substantial Completion, the Purchase Price will, as liquidated damages and not a penalty, be reduced by an amount equal to ██████████ MWac multiplied by the positive difference in MWac (if any) between the Planned Solar Capacity and the aggregate installed nameplate capacity of the Project (such amount, the “Buydown Amount”).</p>
<p>Development Agreements</p>	<p>Seller will negotiate and enter into the contracts necessary to develop, construct, commission, test, and operate the Project prior to the closing under the BTA (such contracts, including the EPC Agreement and the Substation EPC Contract, the “Development Agreements”). It is anticipated that Seller will enter into a turnkey engineering, procurement and construction agreement for the Project’s generating facilities (“EPC Agreement”) with a mutually acceptable contractor (the “EPC Contractor”) and an engineering, procurement, and construction contract for the Project’s substation (the “Substation EPC Contract”) with a mutually acceptable contractor (the “Substation EPC Contractor”).</p> <p>Prior to entering into the EPC Agreement, the Substation EPC Contract, and any Major Project Equipment (as defined below) procurement contract and/or warranty (other than (i) Major Project Equipment that will be procured by the EPC Contractor or Substation EPC Contractor and (ii) master supply agreements or other framework agreements negotiated by Seller or its affiliates that will apply to projects other than the Project whether or not the Project is constructed), Seller shall obtain Buyer’s written approval of such contract which consent shall not be unreasonably withheld, conditioned, or delayed by Buyer; <u>provided</u>, that Buyer may withhold such consent with respect to the EPC Agreement or Substation EPC Contract if, in its reasonable discretion, the terms and conditions in such Development Agreements with respect to Major Project Equipment warranties, insurance, cybersecurity, and EEO requirements are not in accordance with Prudent Industry Practice (as such term will be defined in the BTA). For the avoidance of doubt, any such approval by Buyer shall neither relieve Seller from any obligation under the BTA nor make Buyer a party to any contract so approved until the assignment of such contract at Closing. “Major Project Equipment” means modules, inverters, trackers, high voltage breakers, combiner boxes, switchgear, and generator step-up transformers.</p>
<p>Firm Date Conditions Precedent</p>	<p>Following the execution of the BTA, each party will use commercially reasonable efforts to achieve and will cooperate with the other party to achieve the Firm Date Conditions Precedent (as</p>

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	<p>defined below), which it is responsible to satisfy under the BTA, on or prior to December 31, 2025 (the “Firm Date”). The Firm Date will coincide with the date on which Seller expects to issue full notice to proceed under the EPC Agreement. The “Firm Date Conditions Precedent” are to be agreed by the Parties in the BTA but will include the following:</p> <p>Firm Date Conditions Precedent which are to be satisfied to Buyer’s reasonable satisfaction or may be waived by Buyer in its discretion:</p> <ul style="list-style-type: none">• Unconditional approval by the KPSC of the CPCN; and• Completion of title curative actions necessary to provide Buyer with good and indefeasible title to the Project Assets, free and clear of liens (other than liens created by Owner) or other defects in title. <p>Firm Date Conditions Precedent which are to be satisfied to Seller’s reasonable satisfaction or may be waived by Seller in its discretion:</p> <ul style="list-style-type: none">• Seller will have received all studies and reports necessary for the Project, which are each in form and substance reasonably acceptable to Seller;• An EPC Agreement will have been executed by Seller or its affiliate with an aggregate contract price of less than or equal to an amount to be specified in the BTA;• A Substation EPC Agreement will have been executed by Seller or its affiliates with an aggregate contract price of less than or equal to an amount to be specified in the BTA;• Agreements will have been executed by Seller or its affiliates to purchase all modules with an aggregate contract price of less than or equal to an amount to be specified in the BTA;• Seller will have received all permits necessary for the development, construction and commencement of operations of the Project; and• Financial Closing (as will be defined in the BTA) has occurred. <p>If any Firm Date Condition Precedent is not satisfied to the applicable party’s reasonable satisfaction (or waived by the applicable party in its sole discretion) on or prior to the Firm Date, the applicable party will have the right for a period of 10 business days after the Firm Date to terminate the BTA without any liability.</p>
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<p>Role of Independent Engineer</p>	<p>The BTA will identify a list of mutually acceptable nationally recognized engineering firms, and the Parties will select an independent engineer for the Project from such list (the “Independent Engineer”). The Parties will engage the Independent Engineer by entering into an Independent Engineer Services Agreement, which includes a Scope of Work specifying the duties of the Independent Engineer, as set forth in the BTA.</p> <p>In accordance with the Scope of Work, the Independent Engineer will:</p> <ul style="list-style-type: none"> (i) Provide a neutral, third-party certification that the work performed by the EPC Contractor under the EPC Agreement and the Substation EPC Contractor under the Substation EPC Agreement conforms with such contracts upon achievement of the key milestones under such contracts; (ii) Approve the final punch list of items of the EPC Contractor’s and Substation EPC Contractor’s work to be completed and the completion by such contractors of the punch list items; and (iii) Approve the punch list holdbacks under the EPC Agreement and the Substation EPC Agreement. <p>The Independent Engineer will:</p> <ul style="list-style-type: none"> • Not represent Seller, Buyer, the EPC Contractor, or the Substation EPC Contractor; • Advocate for compliance of the Project with the requirements set forth in the EPC Agreement and the Substation EPC Agreement, as applicable; and • Certify that the requirements for Substantial Completion under the EPC Agreement have been satisfied.
<p>Design Document Review Rights</p>	<p>Buyer will have specified periods of time as detailed in the BTA to review and provide comments on a defined set of design drawings, specifications and similar documents which set forth in detail requirements for the construction of the Project (“EPC Design Documents”).</p> <p>EPC Design Documents will also be subject to review and comment by the Independent Engineer within the applicable time period specified in the Independent Engineer Services Agreement, which time periods will be coterminous with the time periods afforded the Buyer under the BTA.</p>

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	A process for Buyer's review and comment of EPC Design Documents will be further detailed in the BTA.
Schedule Delay	<p>If the closing under the BTA occurs after the Expected Closing Date, Seller will pay to Buyer liquidated damages equal to (a) for the period starting on the day following the Expected Closing Date through the thirtieth (30th) day following the Expected Closing Date, [REDACTED] per MW, multiplied by the Planned Solar Capacity, per day for each day of delay, and (b) for the period starting on the thirty-first (31st) day following the Expected Closing Date, [REDACTED] per MW, multiplied by the Planned Solar Capacity, per day for each day of delay, such liquidated damages amount to be deducted from the Purchase Price paid at closing. In no event will such liquidated damages exceed an amount equal to the amount of the Seller Credit Support.</p> <p>"Expected Closing Date" means December 31, 2026 as may be extended if Seller is entitled to schedule relief attributable to an Excusable Event.</p>
Excusable Events	<p>Seller will be entitled to schedule and cost relief for certain events affecting Seller's performance as provided in the BTA, including:</p> <ul style="list-style-type: none"> (i) Certain delays or increases in costs caused by Buyer including, but not limited to, Buyer's request to make changes to the Project; and (ii) Force majeure, change in law, or similar events to be agreed in the BTA (collectively with the events described in clause (i) above, "Excusable Events"). <p>Notwithstanding the foregoing, in no event will Seller be entitled to an increase in the Purchase Price if the Excusable Event is an event of force majeure, except to the extent the delays due to one or more force majeure events exceed thirty (30) days in the aggregate. The Parties agree that no Excusable Event will result in a change to the Purchase Price in excess of the direct costs incurred by Seller as a result of such Excusable Event.</p>
Closing Conditions under the BTAs	<p>In addition to customary conditions precedent, the following conditions precedent must be satisfied prior to the closing under the BTA.</p> <ul style="list-style-type: none"> • Substantial Completion under the EPC Agreement has occurred. • Buyer and Seller or their designated affiliates shall have entered into (1) a construction management agreement pursuant to which Seller or its designated affiliate will

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	<p>provide construction management services for the Project following the Closing Date until Final Completion (as will be defined in the EPC Agreement); (2) at Buyer’s election, an operation and maintenance agreement pursuant to which Seller or its designated affiliate will provide operation and management services for the Project following the Closing Date; and (3) at Buyer’s election, an asset management agreement pursuant to which Seller or its designated affiliate will provide asset management services for the Project following the Closing Date; in each case in the forms of agreement to be attached to the BTA.</p>
Covenants under the BTAs	<p>The BTA will contain covenants customary for transactions of this nature, including but not limited to:</p> <ul style="list-style-type: none"> • <u>Efforts, Regulatory Approvals, Consents</u> – Cooperative covenants for each party to use commercially reasonable efforts to consummate the transactions contemplated by the BTA, including specified time periods for Buyer to respond to Seller requests for consents and approvals. • <u>Access to Information</u> – Access of Buyer and its authorized representatives to the books and records of Seller, subject to limitations with respect to privileged materials and material pertaining to excluded liabilities. • <u>Determination of CPs and Deliverables</u> – Cooperative covenants which lay out the process for obtaining or finalizing certain development matters pertaining to Closing Date conditions precedent. • <u>Confidentiality</u> – Customary confidentiality provisions with respect to the BTA and the Project, including, seeking consent of the other party with respect to any public announcements or disclosures.
Representations and Warranties in the BTAs	<p>The BTA will contain representations and warranties customary for transactions of this nature.</p>
Indemnification	<p>The BTA will contain mutual indemnification provisions customary for transactions of this nature, including certain limitations, such as a survival period of twenty-four (24) months after the Closing Date, a true deductible of one and one-half percent (1.5%) of the Purchase Price, and an indemnity cap of (i) with respect to Fundamental Representations (as will be defined in the BTA), one hundred percent (100%) of the Purchase Price and</p>

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	<p>(ii) with respect to all other claims, fifteen percent (15%) of the Purchase Price (in each case, with exceptions for indemnification for third-party claims and matters covered by certain insurance and other customary exceptions). Each Party will waive consequential, indirect, punitive and exemplary damages of the other Party, excluding liquidated damages (if any), under the BTA. Following the Closing Date, Seller shall not be obligated to indemnify Buyer for any loss which is subject to indemnification, warranty, repair, or other means of cure or remediation by the EPC Contractor, the Substation EPC Contractor, or another contractor pursuant to the Development Agreements.</p>
<p>Credit Support</p>	<p>No later than ten (10) business days after the Firm Date, Seller shall furnish to Buyer credit support in the form of a letter of credit in an amount equal to [REDACTED]/MWac of the Planned Solar Capacity (the “Seller Credit Support”). The amount of the Seller Credit Support will step down over time as the risk of completion of the Project decreases.</p>
<p>Governing Law</p>	<p>The BTAs will be governed by Kentucky law. Venue for resolution of any dispute under the BTAs will be federal or state court in Jefferson County, Kentucky, and rights to jury trial will be waived.</p>

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EXHIBIT B
PROJECT LOCATION

