

Case No. 2023-00256  
Song Sparrow Solar LLC  
Responses to Siting Board's Post-Hearing Request for Information

**POST-HEARING DR 1:**

State whether mesh will be placed along the fence surrounding the proposed facility. If so, identify whether the mesh will be coated. If not, explain how that decision was reached.

**Response:** Mesh is not proposed along the fence surrounding the perimeter of the facility. It is expected that the proposed vegetation screening plan and existing natural vegetation will provide adequate coverage.

**Witness:** Nick Benjamin

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**POST-HEARING DR 2:**

Provide the estimated distance from the closest residence as it relates to each of the following:

- a. The fence
- b. The panels
- c. The inverter
- d. The substation.

**Response:** Please refer to “Table 1. Nearest Receptors to the Project” included in the Acoustic Assessment Report that was provided as Appendix D of the Site Assessment Report, which provides the estimated distance from the closest non-participating residence as it relates to the Project facilities. This information is also provided below.

**Table 1. Nearest Receptors to the Project**

Land use	Nearest Receptor to	Section of Study Area	Distance from Fence	Distance from Nearest Solar Panel	Distance from Nearest Inverter or Transformer
Residence (R-21)	Inverter	Northeast	281ft	301 ft	492 ft (inverter)
Residence (R-06)	Substation transformer	Southwest	3,625 ft	3,679 ft	1,312 ft (transformer)
Residence (R-09)	Panel tracking system and Project fence	Central	226 ft	256 ft	1,172 ft (inverter)

**Witness:** Nick Benjamin

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**POST-HEARING DR 3:**

Provide the executed purchase power agreement (PPA) between Song Sparrow and Louisville Gas and Electric or Kentucky Utilities Company.

**Response:** The redacted executed PPA is attached as a confidential exhibit submitted under seal consistent with Song Sparrow's Motion for Confidential Treatment, filed concurrently herewith.

**Witness:** Nick Benjamin

**POWER PURCHASE AGREEMENT**

**AMONG**

**SONG SPARROW SOLAR LLC**

**KENTUCKY UTILITIES COMPANY**

**FEBRUARY 24, 2023**

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## LIST OF EXHIBITS

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



**Power Purchase Agreement  
among  
Song Sparrow Solar LLC,  
Kentucky Utilities Company**

This Power Purchase Agreement (this "PPA") is made as of February 24, 2023 ("Effective Date"), by and among (i) **Song Sparrow Solar LLC** ("Seller"), a Delaware limited liability company with a principal place of business at 4900 N. Scottsdale Rd, Scottsdale, AZ 85251, and (ii) **Kentucky Utilities Company** ("KU"), a Kentucky and Virginia corporation with its principal office at One Quality Street, Lexington, Kentucky 40507. KU is sometimes hereinafter referred to as "Buyer".

**WHEREAS**, Seller desires to develop, design, construct, own or lease, and operate a solar photovoltaic electric generating facility in Ballard County, Kentucky with an expected total maximum power output capacity of approximately but not more than the Expected Facility Capacity 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 Buyer at the Point of Interconnection a portion of the Solar Energy Output generated by the Facility and any Renewable Energy Benefits associated with such portion of the 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.

(I) If an index, credit rating or other published matter referred to herein ceases to be calculated or published in a readily available manner, or the index or other published matter cannot be reasonably calculated based on the information available, Seller shall designate another reasonable and substantially-equivalent method of evaluating the subject matter of such index, credit rating or other published matter (or calculating a reasonable and substantially-equivalent proxy for such index, credit rating or other published matter), subject to Buyer’s approval not to be unreasonably withheld or delayed.

## 1.2 Interpretation with Interconnection Agreement.

(A) The Parties recognize that Seller has entered 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 Buyer’s 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 shall be deemed to be a separate entity and separate contracting party from Buyer whether or not the Interconnection Agreement is entered into with Buyer or an Affiliate of Buyer, in its capacity as the Interconnection Provider. Seller acknowledges that Buyer, acting in its capacity as the purchaser hereunder, has no responsibility for or control over

Interconnection Provider, and is 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 Buyer or an Affiliate of 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 Buyer or an Affiliate of 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 Buyer’s rights, duties and obligations under this PPA.

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

“Abandonment” means, after the Commercial Operation Date, the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer to a Financing Party or as otherwise permitted under this Agreement.

“Acceptable Credit Bank” means a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having assets of at least [REDACTED] and a minimum long term issuer rating that is equal to or better than A- from S&P, A3 from Moody’s, or A- from Fitch Group; provided, if, in seeking a Letter of Credit for use as the Seller Credit Support, Seller, despite its commercially reasonable efforts, unable to obtain such Letter of Credit from a bank with a minimum long term issuer rating described above in this definition, a bank with an Investment Grade Rating and which otherwise meets the terms of this definition shall constitute an Acceptable Credit Bank for purposes of such Letter of Credit.

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

“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).

“Apportioned Renewable Energy Benefits” means that portion of the Renewable Energy Benefits that is attributable to the Apportioned Solar Energy Output.

“Apportioned Solar Energy Output” means that portion of the Solar Energy Output that results from Multiplying the Solar Energy Output by the Buyer Percentage.

“Apportioned Test Energy” means that portion of the Test Energy that is attributable to the Apportioned Solar Energy Output.

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

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

“Availability Daily Damages” means, for each Availability Unsatisfactory Day in an Availability Damage Period, the amount equal to the following: (1) the percentage resulting from subtracting the Availability from the Guaranteed Availability on such Availability Unsatisfactory Day; multiplied by (2) the Expected Amount during such Availability Unsatisfactory Day; multiplied by (3) the LD Monetary Factor for such Availability Unsatisfactory Day determined in accordance with Section 8.3(C); multiplied by the Buyer Percentage. (By way of example only, if, on a particular Availability Unsatisfactory Day, the Availability is twenty percent (20%), the Expected Amount is 500 MWh, and both the LD Avoided Cost Input for such Availability Day and the LD REC Input for such Availability Day are greater than \$█/MWh, the Availability Daily Damages for such Availability Unsatisfactory Day would be determined by subtracting the Availability in this example of twenty percent (20%) from the Guaranteed Availability of █ percent (█%) and multiplying the resulting █ percent (█%) by the Expected Amount in this example of 500 MWh, the LD Monetary Factor of \$█/MWh and the Buyer Percentage to arrive at the Availability Daily Damages: ((█) x 500 x \$█ x 37% = \$█))

“Availability Damage Period” has the meaning ascribed to it in Section 8.3(B).

“Availability Damages” means the aggregate of the Availability Daily Damages for the Availability Unsatisfactory Days in the Availability Damage Period.

“Availability Day” means any Day after the date that is one hundred and eighty (180) Days following the Commercial Operation Date and before the end of the Term.

“Availability LD Cure Period” means, with regard to an Availability Underperformance Notice, the period starting the Day after such Availability Underperformance Notice is received in writing by Seller and ending on the Day that is thirty (30) Availability Days following the receipt by Seller of such Availability Underperformance Notice; 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 of any 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 Buyer’s Standard Rate Rider LQF or a successor provision of Buyer’s tariffs, expressed in Dollars. Accordingly, on the Effective Date, the Avoided Energy Cost is \$23.89/MWh.

“Balancing Authority” has the meaning ascribed in Interconnection Provider’s open access transmission tariff.

“Build-Out Date” has the meaning ascribed to it in Section 3.3(B).

“Business Day” means any 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” is defined in the preamble of this Agreement, and includes such Person’s permitted successors and assigns.

“Buyer Curtailment Order” means an instruction from Buyer to Seller to reduce Solar Energy Output from the Facility by the amount, and for the period of time set forth in such instruction; provided, that, for the avoidance of doubt, Buyer Curtailment Order shall not include (i) any instruction to reduce Solar Energy Output from the Facility from the Interconnection Provider to Seller under the Interconnection Agreement or (ii) any instruction from Buyer to Seller to reduce Solar Energy Output from the Facility as

the result of an instruction to reduce Solar Energy Output from the Facility given to Buyer by the Interconnection Provider, Reliability Coordinator or Balancing Authority, under Interconnection Provider's open access transmission tariff; provided, the references to instructions in this definition shall refer to instructions from or to, as the case may be, Buyer's Agent.

"Buyer Curtailment Period" means a period of time during which Seller reduces Solar Energy Output from the Facility pursuant to or as a result of a Buyer Curtailment Order; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Buyer Entities" has the meaning ascribed to it in Section 17.1(B).

"Buyer's Agent" shall mean LG&E and KU Services Company, a Kentucky corporation, and Affiliate of Buyer.

"Buyer's Conditions Precedent" is defined in Section 6.2.

"Buyer Percentage" means 63%, the percentage of the Solar Energy Output to be purchased hereunder by Buyer which shall be stated in decimal form as .63 for purposes of calculations set forth in this Agreement.

"Buyer's Tier 1 CP" is defined in Section 6.2.

"Buyer's Tier 1 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 approvals from the PSC.

“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 Buyer 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” means, with regard to Buyer: (i) 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, (ii) the rating assigned to Buyer’s senior unsecured long-term debt obligations (not supported by third party credit enhancements) or, if Buyer does not have a rating for its senior unsecured long-term debt, then the rating assigned to Buyer by a Credit Rating Agency, is reduced to below an Investment Grade Rating; or (iii) if Buyer does not make payment to Seller when due more than once in any twelve (12) Month period and 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 Standard & Poor’s (S&P), Moody’s and Fitch Group; provided, that another Person may become a Credit Rating Agency or CRA if, and only if, a credit rating provided by such Person is designated and approved in accordance with Section 1.1(l).

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

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

“Daily Delay Damages” means the product of \$█ per MWac of Expected Facility Capacity per Day multiplied by the Buyer Percentage.

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

“Deemed Delivered Energy” means, with respect to a period, the amount of Solar Energy (or portion thereof) that the Facility could have made available at the Point of Interconnection during such period, calculated using the Production Model, and assuming that the Facility (excluding any portions of the Facility that are, during such period, (i) mechanically inoperable, (ii) undergoing a Forced Outage or Excused Maintenance Outage, and/or (iii) inoperable as a result of a Force Majeure event) operated at 100% of the Facility Capacity in MWac throughout such period, but that is not so made available due to (i) Buyer Curtailment Order or (ii) the failure of Buyer to schedule or take Solar Energy at the Point of Interconnection in accordance with this PPA, and includes Curtailed Energy.

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

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

“Discretionary Permit” means a permit that the issuance of which constitutes a discretionary act or discretionary function, as defined under Applicable Laws.

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

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

“Domestic Content Adder” means that increase in ITC or PTC credit rate for “domestic content” provided under Section 48(a)(12) of the Code (for the ITC) and Section 45(b)(9) of the Code (for the PTC).

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

“Effective Date” has the meaning ascribed to it in the Preamble.

“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 circumstance (i) constituting an “Emergency Condition” as such term is defined in the Interconnection Agreement and (ii) that is declared by the Interconnection Provider under and in accordance with the Interconnection Agreement; provided, if at any time the Interconnection Agreement does not define “Emergency Condition,” the meaning of the most closely analogous term in the Interconnection Agreement or, in the absence of an analogous term in the Interconnection Agreement, the meaning of “Emergency Condition” set forth in the Large Generator



Interconnection Agreement as of the Effective Date shall apply for purposes of clause (i) of this definition.

“Energy Communities Adder” means that increase in ITC or PTC credit rate for “energy communities” provided under Section 48(a)(14) of the Code (for the ITC) and Section 45(b)(11) of the Code (for the PTC).

“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” means an event described as such in Section 12.1 or 12.2.

“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 ■■■ percent (■■■%) 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 Year of Scheduled Maintenance Outages during the Non-Scheduled Maintenance Period.

“Expected Amount” means, with respect to a period, the quantity of Solar Energy Output expressed in MWh that would have been produced by the Facility during such period, as calculated by the Production Model, 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.

“Expected Facility Capacity” means 104 MWac, as may be adjusted pursuant to Section 3.3(A) or Section 3.3(B).

“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, at and after the Commercial Operation Date, the Demonstrated Capacity as of the Commercial Operation Date, provided that if Seller elects its option in 3.3(B), the Facility Capacity at and after the Build-Out Date shall be the Demonstrated Capacity as of the Build-Out Date.

“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) related to the third party indebtedness used to fund construction costs 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 by and at the discretion of Seller or its Affiliates in connection with or related to design, development, construction, installation, Testing, Commissioning, operation, maintenance or the direct or indirect ownership, use or leasing 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, equity (including equity financing related to the monetization of Tax Credits and accelerated depreciation by equity investment, issuance of cash in lieu of Tax Credits and/or sale-leaseback agreements), or interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any debt or equity financing, or any combination thereof, in each case for the design, development, construction, installation, Testing, Commissioning, operation, maintenance or the direct or indirect ownership, use or leasing 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.

“Future Environmental 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, having a different source context from Renewable Energy Benefits that did not exist as of the Effective Date (whether such source is statutory or from an international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method; provided, for the avoidance of doubt, Future Environmental Benefits do not include any Renewable Energy Benefits.

“Generator Interconnection Request” has the meaning assigned to it in the Interconnection Provider’s open access transmission tariff.

“Governmental Approval” means, subject to the last sentence of this definition, 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 Buyer, the execution, delivery or performance of this PPA or the procurement pursuant to this PPA of the Apportioned Solar Energy Output and the Apportioned 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.

“GATS” means the Generation Attribute Tracking System administered by PJM Environmental Information Services (PJM EIS)

“Guaranteed Availability” has the meaning ascribed to it in Section 8.3(B).

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

“Identified Buyer Affiliate” means Louisville Gas and Electric Company, a Kentucky corporation that is an Affiliate of Buyer.

“Identified Buyer Affiliate PPA” means that certain power purchase agreement entered into between Seller and Identified Buyer Affiliate dated as of February \_\_, 2023.

“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.

“Indemnifying Party” has the meaning ascribed to it Section 17.3.

“Independent Transmission Organization” or “ITO” means an entity authorized by FERC to administer Buyer’s 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 Customer” has the meaning assigned to it in the Interconnection Provider’s open access transmission tariff.

“Interconnection Delay” means any action or inaction by the Interconnection Provider, ITO, RE or Reliability Coordinator that results in the inability of the Facility to interconnect to Interconnection Provider’s System including (a) the Interconnection Provider’s Interconnection Facilities are not complete and ready for the Facility to connect to Interconnection Provider’s System and thereafter make available Solar Energy and Renewable Energy Benefits at the Point of Interconnection, (b) Interconnection Provider’s breach of the Interconnection Agreement, and (c) the Interconnection Provider’s delays in responding to or attending inspections or other meetings intended for Interconnection Provider to provide “permission to operate” to the Facility.

“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 (including any reliability, network, affected system and other upgrades).

“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.

“Investment Grade Rating” means, with respect to a Person, a minimum long term issuer rating that is equal to or better than BBB- from S&P, Baa3 from Moody’s; or BBB- from Fitch Group; provided that no Credit Rating Agency has a long term issuer rating for such Person that is lower than the ratings specified above.

“ITC” means the investment tax credit established pursuant to Section 48 of the Code.

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

“KU” has the meaning set forth in the Preamble.

“Large Generating Facility” has the meaning assigned to it in the Interconnection Provider’s open access transmission tariff.

“Large Generator Interconnection Agreement” or “LGIA” shall mean the form of interconnection agreement applicable to a Generator Interconnection Request pertaining to a Large Generating Facility that is included in the Interconnection Provider’s open access transmission tariff.

“LD Avoided Cost Input” means with respect to an Availability Day the greater of (i) zero or (ii) the dollar amount that results from subtracting the dollar amount in the Solar Energy Payment Rate from the dollar amount in the 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 an amount (expressed in \$/MWh) equal to the average of at least two National Green-e price quotes for a REC obtained by Seller from nationally recognized brokers for the vintage that matches the delivery Year. The price quotes shall be for the same Day as the Availability Day; provided, if the Availability Day falls on a Day on which the price quotes are not reasonably obtainable, the price quotes for the most recent prior Day on which price quotes were obtainable will be used.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit (i) issued by an Acceptable Credit Bank; (ii) to which Buyer is the beneficiary; (iii) having a stated expiration date of not earlier than 364 Days (or such longer term as may be commercially available) after the date of the original issuance or any renewal thereof; (iv) that automatically renews or permits Buyer on the signature of an authorized representative of Buyer to draw on sight all or any portion of the stated amount if not renewed on or prior to the thirtieth (30th) Day prior to any expiration date of the letter of

credit, including the final expiration date; (v) that is payable or negotiable at an office of the issuing bank (or a correspondent bank thereof) in New York City or such other place as the Parties may agree; (vi) which is payable in United States Dollars in immediately available funds; and (vii) that is governed by the International Standby Practices, International Chamber of Commerce Publication No. 590 (ISP98), and any amendments or revisions thereto, and, to the extent not governed thereby, the laws of the State of New York; and (viii) that is drawable upon issuance of a drawing certificate signed by an authorized representative of Buyer stating that Buyer is entitled to be paid under this Agreement.

“LGIP” shall mean the interconnection procedures applicable to a Generator Interconnection Request pertaining to a Large Generating Facility that are included in the Interconnection Provider’s open access transmission tariff.

“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 the amount, expressed in MWac, equal to ninety percent (90%) of the Expected Facility Capacity as of the Effective Date (i.e., before any adjustment pursuant to Section 3.3(A)).

“Ministerial Permit” means a permit that the issuance of which constitutes a ministerial act or ministerial function, as defined under Applicable Laws.

“Month” means a calendar month.

“Monthly Billing Period” means the period during any particular Month in which either Test Energy and/or Solar Energy Output has been generated by Seller for Buyer and delivered to the Point of Interconnection for sale to Buyer, 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.

“MRETS” means the MISO’s Midwest Renewable Energy Tracking System.

“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.

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

“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 Apportioned 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” has the meaning assigned to it in Exhibit C.

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

“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-scale solar electric generation stations of a 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.

“PTC” means the production tax credit established pursuant to Section 45 of the Code.

“RE” means any regional entity with jurisdiction over Seller as a generator of electricity and operator of the Facility, which as of the Effective Date is SERC.

“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(D).

“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, which as of the Effective Date is the Tennessee Valley Authority.

“Renewable Energy Benefits” means (i) any and all Renewable Energy Certificates, (ii) any and all Renewable Energy Benefits Reporting Rights and (iii) any and all renewable and environmental attributes, emissions reductions, credits, offsets, allowances reporting rights and benefits, howsoever entitled, created by any existing (as of the Effective Date) Applicable Law, and any and all other existing (as of the Effective Date) international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto), associated with the production of the Solar Energy Output, whether or not already described in clause (i) or (ii) of this sentence. Renewable Energy Benefits exclude and do not include (i) any Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) any energy, capacity, reliability or other power attributes from the Facility, or (iii) any Future Environmental Benefits.

“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, if enacted, a 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, 2027, subject to adjustment as described in Section 4.1 and 4.3.

“Required Seller Credit Support Amount” has the meaning assigned to it in Section 11.1.

“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).

“SCC” means system control center, the Buyer’s 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 Buyer.

“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(A).

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

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

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

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

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

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

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

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

“Seller Delivery Excuse” shall mean: (i) any breach by Buyer of its obligations under the PPA, (ii) any delay or failure by 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 failure of Buyer (except as a result of a Force Majeure event, Emergency Condition or Seller Event of Default) to accept Solar Energy Output or Renewable Energy Benefits as and when required under this PPA; provided, the references to breach, delay and failure by Buyer in this definition shall be deemed to include such breach, delay or failure by Buyer acting through Buyer’s Agent.

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

“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) any curtailment of the Facility by Buyer (under Buyer Curtailment Order), an ITO, the Interconnection Provider or any other Person; 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 failure to perform or observe any material term or condition of 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 the Facility’s solar electric generating facility.

“Solar Energy Output” means the net unit contingent electric energy generated by the Facility, as measured and expressed in MWh, 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 compliant with the Interconnection Agreement.

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

“Solar Energy Payment Rate” means \$ [REDACTED] /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.

“Tax Credits” means the ITC or the PTC, 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.

“Termination Payment” has the meaning ascribed to it in Section 12.4(B).

“Termination Payment Damages Cap” shall mean, as of the date a termination of this Agreement by Buyer under Section 12.4 becomes effective, an amount equal to the product of the Buyer Percentage, multiplied by \$ [REDACTED] per MWac of Facility Capacity at such time, decreasing annually by an amount equal to the product of the Buyer Percentage multiplied by \$ [REDACTED] per MWac; provided that the Termination Payment Damages Cap shall not be less than the product of the Buyer Percentage, multiplied by \$ [REDACTED] per MWac of Facility Capacity at such time.

“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, 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 Buyer at the Point of Interconnection, and purchased by Buyer, all prior to the Commercial Operation Date pursuant to Section 10.2(C) and Section 4.3.

“Test Energy Payment Rate” means 75% of the Solar Energy Payment Rate.

“Test Period Transmission Service” means as-available non-firm secondary network transmission service which would allow energy to flow from the Point of Interconnection to the Buyer’s load.

“Tier 1 CP Confirmation Notice Deadline” means either May 30, 2023 for Buyer’s Tier 1 CP Confirmation Notice, or October 31, 2023 for Seller’s Tier 1 CP Confirmation Notice.

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

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

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

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

“Year” or “Years” means a calendar year or calendar years.

## **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 (the “Term”). 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 Buyer.

### **ARTICLE 3** **Facility Description**

3.1 Summary Description. Subject to the satisfaction or waiver of the Seller's Conditions Precedent, Seller shall construct, own, operate, and maintain the Facility and associated equipment having an actual maximum net generating nameplate capacity rating, measured in MWac, of up to the Expected Facility Capacity.

3.2 General Design of the Facility. Subject to the satisfaction or waiver of the Seller's Conditions Precedent and subject to the provisions of Section 4.1, the Facility shall be constructed in accordance with Prudent Industry Practice(s) and in compliance with the terms and conditions of the Interconnection Agreement, Applicable Law, and applicable permits. The Facility shall at all times:

(A) have the required panel space to accommodate metering, generator telemetering equipment and communications equipment;

(B) have remote monitoring facilities; and

(C) have, the greater of 1) no fewer than one (1) location per 25 MWac of Facility Capacity and 2) one (1) met station for every major rectangular region within the plant, with no rectangular region encompassing fewer than 3 inverter blocks, rounded up to the next whole number; and distributed evenly throughout the project site, suitable meteorological stations and solar radiation meters necessary to characterize the solar resource and site ambient conditions, global horizontal irradiance (GHI) (with two sensors per station), tracker-mounted plane of array irradiance sensors at each station (if reasonably possible with the required met station radius), but no fewer than 50% of the met station quantity (rounded up for an odd number of met stations across the plant) temperature, wind speed, pressure and humidity.

3.3 Facility Capacity Adjustment.

(A) Prior to issuance by Seller of full notice to proceed to its EPC contractor, Seller may, on one occasion only, decrease the Expected Facility Capacity by providing Buyer with written notice of such adjustment; provided, however, that Seller may not decrease the Expected Facility Capacity to below the Minimum Demonstrated Capacity without Buyer's prior written consent, which Buyer may withhold in its sole discretion.

(B) If Commercial Operation is achieved at less than the Expected Facility Capacity (but at least the Minimum Demonstrated Capacity), Seller shall have the right to continue completion of the Facility for a period of one hundred eighty (180) Days after the Commercial Operation Date (the expiration of such one hundred eighty (180) Day period, the "Build-Out Date") thereafter in order to achieve Demonstrated Capacity

at a level up to the Expected Facility Capacity. Any such completion activities shall not excuse Seller from its obligations with respect to Guaranteed Availability (provided that the Guaranteed Availability during the period ending on the Build-Out Date shall be determined assuming that the Facility Capacity is equal to the Demonstrated Capacity as of the Commercial Operation Date, and after the Build-Out Date shall be determined using the Demonstrated Capacity as of the Build-Out Date).

## **ARTICLE 4**

### **Commercial Operation**

#### **4.1 Completion by Required Completion Date.**

(A) Seller shall cause the Facility to achieve Commercial Operation 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 on which a Force Majeure event occurs, provided that the Required Commercial Operation Date shall not be extended by more than one hundred eighty (180) days for a Force Majeure event; (ii) each Day after a date on or before which Section 6.2 states that Buyer's Conditions Precedent should occur and before the date that Buyer deliver Buyer's CP Confirmation Notice with respect to such Buyer's Conditions Precedent; (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); and (iv) each Day on which an Interconnection Delay occurs; provided that if any two or more of the foregoing occur on the same Day, such Day shall be counted as just one Day for purposes of such extension.

(C) In the event that Commercial Operation has not occurred by the Required Commercial Operation Date (as extended pursuant to Section 4.1(B) and/or Section 4.3), Seller may either (i) terminate this PPA with immediate effect or (ii) extend the Required Commercial Operation Date (as may have been extended pursuant to Section 4.1(B) and/or Section 4.3) by a period of ninety (90) Days, by notifying Buyer on or before the Required Commercial Operation Date (as may have been extended pursuant to Section 4.1(B) and/or Section 4.3) of its intent to so terminate or further extend the Required Commercial Operation Date.

(D) If Seller so extends the Required Commercial Operation Date pursuant to Section 4.1(C), Daily Delay Damages shall accrue starting on the date that is ninety (90) Days after the Required Commercial Operation Date (as extended pursuant to Section 4.1(B) and/or Section 4.3 but as it stood before extension under Section 4.1(C)) and accrue for every Day thereafter until the earlier to occur of the Commercial Operation Date or the expiration of the ninety (90) Day extension period described in Section 4.1(C). If Commercial Operation has not occurred by the end of such ninety (90) Day extension

period, Buyer may elect to terminate this Agreement with immediate effect upon written notice delivered to Seller within ten (10) Days after the end of such ninety (90) Day extension period. If Buyer fails to so terminate the Agreement, Seller shall have an additional period of up to thirty (30) Days following the end of the ninety (90) Day extension period to achieve Commercial Operation, and if Commercial Operation is not so achieved within such thirty (30) Day period, this Agreement shall terminate automatically without any further action by any Party.

(E) If Commercial Operation has not occurred by the Required Commercial Operation Date (as extended pursuant to Section 4.1(B) and/or Section 4.3) and Seller has, as of the Required Commercial Operation Date, neither (i) terminated this PPA pursuant to Section 4.1(C) nor (ii) elected to extend the Required Commercial Operation Date pursuant to Section 4.1(C), Buyer may elect to terminate this Agreement with immediate effect upon written notice delivered to Seller within ten (10) Days after the Required Commercial Operation Date. If Buyer fails to so terminate the Agreement, Seller shall have an additional period of up to thirty (30) Days following the Required Commercial Operation Date to achieve Commercial Operation, and if Commercial Operation is not so achieved within such thirty (30) Day period, this Agreement shall terminate automatically without any further action by any Party.

(F) The Parties sole and exclusive remedies and liability for the failure of (a) Seller to construct the Facility; (b) the Facility to achieve Commercial Operation by the Required Commercial Operation Date (as may be extended by the provisions of this Section 4.1); or (c) the Facility to achieve Commercial Operation at any specific capacity level or at least the Minimum Demonstrated Capacity shall be the right to terminate this Agreement as set forth in this Section 4.1 and the obligation of Seller to pay Daily Delay Damages to Buyer; provided, (i) such Daily Delay Damages will be capped at the Required Seller Credit Support Amount; (ii) if Seller terminates this Agreement under Section 4.1(C), Seller shall have no obligation to pay Daily Delay Damages to Buyer; (iii) if the Required Commercial Operation Date is extended more than 180 Days under Section 4.1(B) as a result of circumstances described in clause (i) of Section 4.1(B) and Seller terminates this Agreement under Section 4.1(D) or Section 4.1(E), Seller shall have no obligation to pay Daily Delay Damages to Buyer with respect to delays resulting from circumstances described in clause (i) of Section 4.1(B); and (iv) with the exception of Seller's obligation to pay any Daily Delay Damages not otherwise excluded under this Section 4.1(F), neither Seller nor Buyer shall have liability to the other after a termination of this Agreement under Section 4.1(C), Section 4.1(D) or Section 4.1(E). Each Party agrees and acknowledges that the damages that Buyer would incur due the failure of (a) Seller to construct the Facility; (b) the Facility to achieve Commercial Operation by the Required Commercial Operation Date (as may be extended by the provisions of this Section 4.1); or (c) the Facility to achieve Commercial Operation at any specific capacity level or at least the Minimum Demonstrated Capacity would be difficult or impossible to predict with certainty and that the Daily Delay Damages are a fair and reasonable calculation of such damages.

(G) If the Commercial Operation Date occurs and Buyer is entitled to Daily Delay Damages, Buyer shall invoice Seller for such owed Daily Delay Damages

after the Commercial Operation Date in accordance with the provisions of Article 9. If Seller fails to pay such invoices in accordance with Article 9, Buyer may draw upon the Seller Credit Support for any such amounts and, by written notice to Seller require Seller to, within thirty (30) Days of such notice, cause the Seller Credit Support to be replaced, amended or restored, such that the aggregate amount of the Seller Credit Support is equal to the Required Seller Credit Support Amount. If this Agreement terminates without the occurrence of the Commercial Operation Date and Buyer is entitled to Daily Delay Damages, Seller's obligation to pay such Daily Delay Damages shall survive such termination and Buyer shall invoice Seller for such owed Daily Delay Damages after the termination of this Agreement in accordance with the provisions of Article 9.

#### 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, 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 Buyer;

(C) Buyer shall have received a certificate addressed to Buyer 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 Buyer's reasonable satisfaction that it can reliably transmit real time data and measurements from solar radiation meters to Buyer.

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



4.3 Seller Election to Sell Test Energy to Buyer. Seller may, by written notice to Buyer no earlier than sixty-five (65) Days and no later than five (5) Business Days prior to the Day on which the Facility first produces Test Energy, elect to sell, subject to Section 4.5, all Apportioned Test Energy generated prior to the Commercial Operation Date to Buyer for the compensation described in Section 8.1(B). In the event Seller timely makes such election, (i) Buyer shall request and attempt to procure monthly Test Period Transmission Service at Buyer's expense within five (5) Business Days of Seller's notice of such election to Buyer and (ii) Seller shall coordinate the production and delivery of Test Energy with Buyer, including providing Buyer with prior notice of delivery as Buyer may reasonably request. Once Seller makes such election, all Test Energy generated prior to the Commercial Operation Date shall be purchased and sold as described in this Section 4.3 and Section 8.1(B). If monthly Test Period Transmission Service is not available, Buyer will coordinate with Seller and will request and attempt to purchase weekly or daily Test Period Transmission Service as specified by Seller. In the event that no monthly, weekly, or daily Test Period Transmission Service is available, (a) Buyer will not be required to purchase any other alternate transmission services, including firm transmission services, (b) Seller may pursue the sale of test energy as described in Section 4.4, and (c) the Required Commercial Operation Date shall be extended by thirty (30) Days. Seller shall be responsible for all interconnection arrangements and costs required to sell Test Energy as described in this Section 4.3.

4.4 Sale of Test Energy to Persons other than Buyer. If, as of the Day the Facility first produces Test Energy, Seller has not made the election described in Section 4.3 at least five (5) Days prior to such Day, Seller may make other arrangements for the delivery, subject to Section 4.5, of all Apportioned Test Energy generated prior to the Commercial Operation Date to Persons other than Buyer. Seller shall be responsible for all interconnection and transmission arrangements and costs required to sell Test Energy as described in this Section 4.4 or make any other disposition of Test Energy. For the avoidance of doubt, Buyer shall not be entitled to receive proceeds of sales of Test Energy pursuant to this Section 4.4.

4.5 Renewable Energy Benefits from Test Energy. Whether or not Seller makes an election as described in Section 4.3, Seller shall retain, and may sell to third parties or otherwise dispose of, any and all Renewable Energy Benefits associated with Test Energy generated before the Commercial Operation Date; provided, Seller shall retain the proceeds of, and be responsible for the costs of making, any such sale or disposition. For the avoidance of doubt, Buyer shall not be obligated or entitled to purchase Renewable Energy Benefits associated with Test Energy generated before the Commercial Operation Date.

## **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 Apportioned Solar Energy Output and Apportioned Test Energy from the Facility to Buyer at the Point of Interconnection at the required voltage. Buyer shall be responsible for all transmission

arrangements and costs or charges, if any, imposed in connection with the delivery of Apportioned 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 Buyer's open access transmission tariff or any other transmission utility, regional transmission organization, NERC, a RE or any other entity. Seller shall post and maintain any and all security for payment and performance, if, when and for so long as required under the Interconnection Agreement. Arrangements for the installation and operation of the Interconnection Provider's Interconnection Facilities shall be governed by 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 Buyer's 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) on occurrence and without intentional time delay 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 Buyer agrees that Seller shall retain all of its rights thereunder without regard to any separateness of Buyer and the Interconnection Provider. Accordingly, electric metering shall be in compliance with the Interconnection Agreement. Seller will grant Buyer access to all metering data and other meter information, including testing, on same basis as available to Seller.

5.4 Interconnection Information. Subject to FERC regulations and the FERC standards of conduct, Buyer shall be permitted to contact and obtain information concerning the Facility and Interconnection Facilities directly from the Interconnection Provider, subject to obtaining the prior written consent of Seller with respect to each such contact and request for information (which Seller shall not unreasonably withhold or delay).

## **ARTICLE 6**

### **Conditions Precedent**

6.1 Seller's Conditions 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 (or waiver by Seller) as described in Section 6.3 of each of Seller's Conditions Precedent described in this Section 6.1(A) (collectively the "Seller's Tier 1 CPs") on or before October 31, 2023:

- (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) the Buyer's Tier 1 CPs shall have been satisfied without any requirement to modify the terms of this Agreement, unless such modifications are acceptable to both Seller, in its sole discretion, and Buyer, in its sole discretion, and are mutually agreed to in a written amendment to this Agreement; and
- (iv) Seller and Identified Buyer Affiliate have entered into the Identified Buyer Affiliate PPA.

(B) Seller's obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence (or waiver by Seller) as described in Section 6.3 of Seller's Condition Precedent described in this Section 6.1(B) ("Seller's Tier 2 CP") on or before March 31, 2024:

- (i) Seller shall have received a preliminary title report with regard to the Site that does not include any third party encumbrances unacceptable to Seller (acting in its reasonable discretion).

(C) Seller's obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence (or waiver by Seller) as described in Section 6.3 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, 2024; provided, however, that if the Seller's Tier 2 CP Confirmation Notice is issued after March 31, 2024, then, without affecting any termination right of either Party with respect to a delay in Seller's Tier 2 CP 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 siting, zoning, planning commission, conditional use or other permits and other Governmental Approvals constituting Discretionary Permits and which are necessary for the construction, Testing, Commissioning, placing in service and operation of the

Facility, and such permits and Governmental Approvals have become final and non-appealable, provided that all Ministerial Permits necessary to commence construction or achieve Commercial Operation shall not be considered Seller's Tier 3 CPs, with any delays in such Ministerial Permits addressed in accordance with and subject to Article 14;

- (ii) Seller shall have executed an agreement with Ballard County with respect to payment in lieu of taxes in conjunction with the issuance of industrial revenue bonds;
- (iii) 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;
- (iv) Seller shall have received a report from Buyer's 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]; and
- (v) Seller shall have executed a LGIA that allows the Facility to interconnect at a level equal to at least the Expected Facility Capacity and provides for a construction schedule that will allow the Seller to achieve the Required Commercial Operation Date.

(D) Seller's obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence (or waiver by Seller) as described in Section 6.3 of Seller's Condition Precedent described in this Section 6.1(D) (the "Seller's Tier 4 CPs") on or before December 31, 2026:

- (i) Seller shall have met the requirements to qualify the Facility for the ITC or the PTC, each with the Energy Communities Adder and the Domestic Content Adder, and shall have delivered a certificate addressed to Buyer from a senior officer of Seller familiar with the Facility describing whether the Facility will be financed using the ITC or the PTC; and
- (ii) Financial Closing has occurred.

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

(A) Buyer's obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence (or waiver by Buyer) as described in Section 6.3 of the Buyer's Conditions Precedent described in this Section 6.2(A) (the "Buyer's Tier 1 CPs") on or before May 30, 2023:

- (i) Buyer shall have received all Commission Approvals necessary, as determined in the Buyer's sole discretion, to allow the Buyer to perform its obligations under this Agreement, without any requirement to modify this Agreement, unless such modifications are acceptable to both Seller, in its sole discretion, and Buyer, in its sole discretion, and are mutually agreed to in a written amendment to this Agreement;
- (ii) Buyer shall have designated the entire Facility as a Network Resource and secured unconditional firm network transmission service from the Point of Interconnection to Buyer's load for the Term; and
- (iii) Seller and Identified Buyer Affiliate have entered into the Identified Buyer Affiliate PPA.

### 6.3 Failure of Condition Precedent.

(A) Tier 1 CPs. The Tier 1 Seller's CPs and Tier 1 Buyer's CPs (collectively the "Tier 1 CPs") shall be deemed satisfied upon (i) delivery by Seller to Buyer 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 Buyer's CPs are based (the "Seller's Tier 1 CP Confirmation Notice"); and (ii) delivery by Buyer to Seller of a written notice stating that Buyer has achieved or waived all Tier 1 Buyer's CPs and that Buyer does not object to any conditions of the approvals on which the Tier 1 Buyer's CPs are based (the "Buyer's Tier 1 CP Confirmation Notice"). If the Seller's Tier 1 CP Confirmation Notice and/or the Buyer's Tier 1 CP Confirmation Notice are not delivered by the applicable Tier 1 CP Confirmation Notice Deadline, 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 the applicable Tier 1 CP Confirmation Notice Deadline, 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 to the applicable Tier 1 CP Confirmation Notice Deadline if it reasonably determines that such Party's Tier 1 CPs will not be achieved by the applicable Tier 1 CP Confirmation Notice Deadline.

(B) Tier 2 CPs. The Tier 2 Seller's CP shall be deemed satisfied upon delivery by Seller to Buyer of a written notice stating that Seller has achieved 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 March 31, 2024, either Party may 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 to May 30, 2024 if it reasonably determines that any Tier 2 Seller's CPs will not be achieved by May 30, 2024.

(C) Tier 3 CPs. The Tier 3 Seller's CPs shall be deemed satisfied upon delivery by Seller to Buyer 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"). Subject to any extension as described in Section 6.1(C), if the Seller's Tier 3 CP Confirmation Notice is not delivered by December 31, 2024, 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, 2024 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. Seller may provide a Tier 3 CP Termination Notice with immediate effect at any time prior to March 1, 2025 if it reasonably determines that the Seller's Tier 3 CPs will not be achieved by March 1, 2025.

(D) Tier 4 CPs. The Tier 4 Seller's CP shall be deemed satisfied upon delivery by Seller to Buyer 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 December 31, 2026, 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 to March 1, 2027 if it reasonably determines that any Tier 4 Seller's CPs will not be achieved by March 1, 2027.

(E) Upon the effectiveness of any termination as provided in this Section 6.3, this Agreement shall terminate without any liability for any Party, and Buyer shall promptly return to Seller all Seller Credit Support.

## **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 and continuing through the end of the Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all right, title and interest in and to the Apportioned Solar Energy Output (and the Apportioned Renewable Energy Benefits associated with such Solar Energy Output) that Seller makes available at the Point of Interconnection.

(B) As between Seller and Buyer, Seller shall be in control of the Solar Energy Output from the Facility up to and until delivery and receipt at the Point of Interconnection and Buyer and Identified Buyer Affiliate shall be in control of such energy from and after delivery and receipt at the Point of Interconnection. At and after the Point of Interconnection, Seller will have no control over, or responsibility for, the division of the Solar Energy Output between the Buyer and Identified Buyer Affiliate. Title and risk of loss related to the Apportioned Solar Energy Output shall transfer from Seller to Buyer at the Point of Interconnection.

(C) Ownership by Buyer of Apportioned Renewable Energy Benefits associated with Solar Energy Output purchased by Buyer as set forth in Section 7.1(A) shall be for the entire Term of this PPA, including any Apportioned 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. Buyer may, after so obtaining such Apportioned Renewable Energy Benefits from Seller, assign, to the extent permitted by Applicable Law and this PPA, such Buyer’s rights, title and interest in and to any Apportioned Renewable Energy Benefits obtained under Section 7.1(A) to one or more third parties under any transaction permitted by Applicable Law; provided that for the avoidance of doubt, any such assignment shall not relieve Buyer of its obligation to pay for Apportioned Solar Energy Output and Apportioned Renewable Energy Benefits under this PPA and shall not require Seller to take any action with respect to such third party assignment. Any financial or other compensation received by Buyer from the disposition of Renewable Energy Benefits Reporting Rights held by Buyer as set forth in Section 7.1(A) shall inure solely to the benefit of Buyer.

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

(E) Seller and Buyer agree that, as of the Effective Date, the Apportioned Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyer shall be documented and exist through Renewable Energy Certificates that are reportable and transferable on either GATS or MRETS. On or before April 1, 2025, Buyer shall notify Seller in writing whether they desire to have Seller obtain registration with either GATS or MRETS for the Apportioned Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyer. Seller shall thereafter cause the Facility to obtain and maintain registration in good standing with either GATS or MRETS (as so elected by Buyer) throughout the Term. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting requirements of GATS or MRETS relating to the Apportioned Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyer. Buyer shall, at its own cost and expense, register with, pay all fees required by, and comply with, all other requirements

of GATS or MRETS (as so elected by Buyer) in order to receive the Apportioned Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyer. During the Term, Seller shall effectuate the transfer of Apportioned Renewable Energy Benefits in the form of Renewable Energy Certificates under and in accordance with the operating rules of GATS or MRETS (as so elected by Buyer). In the event that the Buyer no longer desire to have the Apportioned Renewable Energy Benefits documented and transferred through GATS or MRETS (as so elected by Buyer) or either such elected system ceases to exist, Buyer may designate a new system of reporting and trading the Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyer. Upon such election, Seller and Buyer shall have a reasonable period of time to obtain registration on such new system, and after all Parties have so obtained registration on such system, Seller shall effectuate the transfer of Apportioned Renewable Energy Benefits to Buyer in accordance with the operating rules of such system. Buyer shall always have the right to elect to have Seller transfer Apportioned Renewable Energy Benefits through mutually agreed written instruments that document the transfer of such Apportioned Renewable Energy Benefits to Buyer as an alternative to GATS, MRETS or any other system. The Parties acknowledge and agree that the costs to Seller with respect to (a) obtaining and maintaining registration on GATS, MRETS or any other system for the reporting and trading of Apportioned Renewable Energy Benefits (including Renewable Energy Certificates), (b) creating, registering and transferring Apportioned Renewable Energy Benefits (and Renewable Energy Certificates) on any such system or otherwise, and (c) additional or different obligations needed to maintain compliance with such systems and the ability to create, register and transfer such Apportioned Renewable Energy Benefits (including Renewable Energy Certificates), to the extent such obligations result from any change in such systems or any Change in Applicable Law, shall be limited to [REDACTED] dollars (\$ [REDACTED]) per Year. If Seller incurs or pays costs in excess of such amounts, Buyer shall reimburse Seller for any such costs in excess of such [REDACTED] dollars (\$ [REDACTED]) per Year amount. Notwithstanding anything to the contrary herein, Seller shall not be obligated to (a) incur any capital expenditures or otherwise be required to alter, modify, augment or enhance the Facility in order to create, register or transfer Apportioned Renewable Energy Benefits (or Renewable Energy Certificates) as a result of any Change in Applicable Law, or (b) retire any Apportioned Renewable Energy Benefits on any tracking system or otherwise on behalf of the Buyer.

(F) Future Environmental Benefits. The Parties acknowledge and agree, as of the Effective Date, that Future Environmental Benefits may be created after the Effective Date. Buyer shall have the right to obtain such Future Environmental Benefits multiplied by the Buyer Percentage and if Buyer elect to exercise such right, Seller shall take all reasonable actions necessary to realize the full value of such Future Environmental Benefits for the benefit of Buyer, provided (i) that in so doing, Seller shall not be obligated to incur any capital expenditures or otherwise be required to alter, modify, augment or enhance the Facility; and (ii) Buyer shall reimburse Seller for any increased costs associated with such actions.

(G) Subject to Section 7.1(H), from time to time but no more than once per calendar year, Buyer may, with the concurrence of Identified Buyer Affiliate, and upon mutual agreement with Seller (not to be withheld if the terms and conditions of this Section



7.1(G) are met), amend this PPA and the Identified Buyer Affiliate PPA to change the respective Buyer Percentage hereunder and thereunder, subject to the following conditions:

- (i) the sum of the Buyer Percentage and percentage of Solar Energy Output purchased by Identified Buyer Affiliate shall be equal to one hundred percent (100 %);
- (ii) the entity (whether Buyer or Identified Buyer Affiliate) receiving a greater allocation of the Buyer Percentage than previously held: (i) is not subject to a Credit Event or an equivalent event, (ii) is not a defaulting party with respect to an ongoing Buyer Event of Default or an equivalent event, and (iii) has not been a defaulting party with respect to Buyer Event of Default or equivalent event more than once in the seven hundred thirty (730) Day period prior to the proposed effective date of such change; and
- (iii) the Buyer and Identified Buyer Affiliate have obtained any and all Governmental Approvals required for such change.

(H) For the sake of clarity, any change in Buyer Percentage made in accordance with Section 7.1(G) will in no way impact Seller's obligation with regard to the delivery of Solar Energy Output to the Point of Interconnection.

## 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 Buyer with a good faith non-binding 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 Buyer with a good faith estimate of the hourly quantities (and summed for each Month) of Solar Energy Output that Seller expects to generate in the following Year (the "Projected Schedule").

(B) If, at any time following submission of a good faith estimate as described in Section 7.2(A), Seller becomes aware of any change, not including any change in actual or forecasted weather conditions on which the estimate is based, that materially alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.3 No Sale to Third Parties. Except as provided in Section 8.2, during periods when there is Buyer Event of Default, or for the sale of Test Energy as provided in Section 4.4, all of the Apportioned Solar Energy Output and Apportioned Renewable Energy

Benefits shall be dedicated exclusively to Buyer for so long as this Agreement is in force and effect. Seller shall not (a) sell, divert, grant, transfer or assign any Apportioned Solar Energy Output, Apportioned Renewable Energy Benefits, or Capacity Rights associated with the Apportioned Solar Energy Output 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 other than the Identified Buyer Affiliate. 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, 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 product of the Buyer Percentage multiplied by the sum of:

- (i) over all hours of the Monthly Billing Period the product of: (I) the Solar Energy Payment Rate; and (II) the sum of (a) Solar Energy Output (MWh) delivered to the Point of Interconnection from the Facility during that hour plus (a) the sum of all Deemed Delivered Energy during that hour; and
- (ii) (if the certificate provided by Seller pursuant to Section 6.1(D)(i) states that Seller will utilize the PTC for financing the Facility) the result of dividing (I) the product of (a) the amount of such Deemed Delivered Energy multiplied by (b) the PTC rate applicable to the Facility as determined pursuant to Section 45(b) of the Code as in effect for such Monthly Billing Period, converted to a dollar per MWh basis; by (II) one (1) minus the highest then-applicable federal, state or local income tax rate applicable to Seller or its Affiliates or lenders providing tax equity financing for the Facility;

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, and Seller shall invoice Buyer for such Excess Solar Energy, if applicable, on the invoice sent to Buyer during the Month following the end of each Year.

(B) Test Energy Payment. In the event Seller timely makes the election described in Section 4.3, Buyer shall pay Seller for Apportioned 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 (i) the Buyer Percentage, multiplied by (b) the Test Energy Payment Rate, multiplied by (c) the amount of Test Energy (MWh) delivered during that Month.

## 8.2 Curtailed Energy.

(A) Buyer shall have the right to order Seller to curtail Solar Energy Output through Buyer Curtailment Orders, provided that Buyer shall pay Seller for the Deemed Delivered Energy associated with Buyer Curtailment Period as set forth in Section 8.1. All Buyer Curtailment Orders shall be communicated verbally to Seller's operation control center and then confirmed in writing to Seller's operational representative.

(B) If (i) Seller cannot deliver Solar Energy Output because of a Seller Delivery Excuse; or (ii) Buyer Curtailment Order, then, if permitted pursuant to Applicable Law, and for any periods during which a circumstance described in clauses (i) and (ii) is occurring, Seller may offer Solar Energy Output that the Facility generates during such periods ("Curtailed Energy") and associated Renewable Energy Benefits ("Curtailed Renewable Energy Benefits") to third-parties as may be interested and able to purchase such Curtailed Energy or Curtailed Renewable Energy Benefits. If Seller sells any Curtailed Energy or Curtailed Renewable Energy Benefits, then the amount payable by Buyer pursuant to Section 8.1(A) shall be reduced by an amount equal to the product of the Buyer Percentage multiplied by ■■■ percent (■■■%) of the net revenue received by Seller pursuant to such sale. Seller shall not be in default hereunder (and shall still be entitled to payment as described in Section 8.1) if it does not sell (or offer for sale) any Curtailed Energy or Curtailed Renewable Energy Benefits.

(C) 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 the date that is sixty (60) Days after the Commercial Operation Date, Seller shall provide Buyer with the Production Model. The Production Model shall be used for purposes of calculating Expected Amounts and any amount of Deemed Delivered Energy. Periodically throughout the Term but no more often than three times during the first four Years of the term and once in each subsequent Year during the Term, if a Party believes that the Production Model does not contain the proper variables or inputs or yields incorrect results when it is used to calculate an Expected

Amount or any amount of Deemed Delivered Energy, such Party may propose an adjustment or correction 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 and selected by Seller in its reasonable discretion.

(B) Subject to the provisions of this Section 8.3(B), Seller guarantees that starting 180 days after COD, the actual Availability of the Facility shall be at least █████ percent (██%) (the "Guaranteed Availability") measured over each Availability Day. From time to time, Buyer may, if Buyer's data indicates that three or more consecutive Availability Days constitute Availability Unsatisfactory Days and there exists no Excused Maintenance Outage or Seller Uncontrollable Minutes on such Availability Days, request that Seller provide, and Seller shall provide, a report of the Expected Amount (calculated using the Production Model) for such Availability Day or Availability Days. If Seller did not achieve the Guaranteed Availability for three or more such consecutive Availability Days, Buyer may provide Seller with written notice that the Facility did not achieve the Guaranteed Availability for such Availability Day or Availability Days (an "Availability Underperformance Notice"). If an Availability Underperformance Notice is delivered, then: (i) if an Availability Satisfactory Day occurs or has occurred during the Availability LD Cure Period established under such Availability Underperformance Notice, then (1) such Availability LD Cure Period shall end, (2) such Availability LD Cure Period shall not resume, (3) no Availability Damage Period shall commence as a result of the occurrence of such Availability Underperformance Notice, and (4) Seller shall not be in default or owe damages as a result of such Availability Underperformance Notice; or (ii) if an Availability Satisfactory Day does not occur or has not occurred during the Availability LD Cure Period established under such Availability Underperformance Notice, Seller shall, for each Availability Day occurring the end of after such 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 (such period, an "Availability Damage Period"), pay liquidated damages to equal to the Availability Damages over such Availability Damage Period. For the avoidance of doubt, the occurrence of an Availability Satisfactory Day will cure any and all Availability Unsatisfactory Days that occurred within the Availability LD Cure Period to which such Availability Satisfactory Day occurred. For the further avoidance of doubt, if an event of Force Majeure has occurred and is ongoing, and the claiming party has followed and is following all notice, mitigation and other procedural requirements associated with such event of Force Majeure as set forth in Article 14, Seller's performance obligations under this Section 8.3(B) shall be suspended for the duration of the event of Force Majeure.

(C) The "LD Monetary Factor" for an Availability Day is equal to the lesser of (i) \$████/MWh 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 sentence are the same amount, item (ii) shall be such amount. If items (i) and (ii) are equal, the LD Monetary Factor shall be \$████/MWh.

(D) In the event liquidated damages become due under Section 8.3(B) Buyer shall, no more frequently than once per Month, calculate and issue a statement to Seller for the amount due Buyer 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 Buyer 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) the required payment by Seller under this Section 8.3 shall be Buyer's sole remedy and Seller's sole liability for the matters covered by this Section 8.3; provided, that the obligations of Seller under Section 10.3 and the associated Event of Default described in Section 12.1(D) shall not be deemed to be a matter covered by this Section 8.3.

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 with respect to any such action.

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 Point of Interconnection 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 (10<sup>th</sup>) 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 Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month. Such invoice shall show information and calculations, in reasonable detail, and shall, subject to Section 12.9(B) be sent by Seller to Buyer's Agent but naming Buyer as payor. Buyer shall pay Seller such invoiced amounts on or before the later to occur of (i) the date that is sixteen (16) Business Days after the date of delivery of such invoice, and (ii) the date that is twenty-two (22) Days after 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 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. Buyer shall pay Seller such invoiced amounts within fifteen (15) Days of the date of such invoice.

(D) 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 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 Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(F) Seller shall, except as otherwise provided in this Section 9.1(F) or in Section 12.9(B), direct its invoices under this PPA to Buyer's Agent as agent but naming Buyer as payor. Seller may request written confirmation of such an arrangement from the Buyer's Agent, and may condition such invoicing arrangement on receiving such confirmation. In the event Buyer experiences a Credit Event or Buyer's Agent experiences an equivalent event, Seller may thereafter decline to direct invoices to Buyer's Agent and thereafter direct invoices to Buyer.

9.2 Miscellaneous Payments. Subject to Sections 9.5 and 9.8, 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. If a Party should dispute a portion of the charges set forth on any such invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

9.3 Currency and Method of Payment. Notwithstanding anything contained in this PPA, all payments to be made by either Seller or Buyer 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 Buyer to Seller or from Seller to Buyer 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 Seller provided Buyer 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 three hundred sixty-five (365) Days 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 three hundred sixty-five (365) Days of the date of such statement.

#### 9.7 Taxes.

(A) All Apportioned Solar Energy Output delivered by Seller to Buyer hereunder is on a wholesale basis. Buyer may use the Apportioned Solar Energy Output for its own consumption or resell it to third parties. Buyer 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 Buyer for Taxes imposed on or measured by Buyer’s overall revenues or income. Buyer shall be responsible for the payment of, and no amount payable by Seller to Buyer shall be subject to adjustment for, Taxes imposed on 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 seven hundred thirty (730) Days, 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 Buyer fails to make (directly or through Buyer's Agent) timely payment of two (2) or more monthly invoices of Seller in any twelve (12) Month period, Buyer shall provide to and maintain with Seller (following Seller's invoice for such amount) a cash security deposit from Buyer equal to two (2) times the average amount of the previous twelve (12) monthly invoices to Buyer, and Seller shall retain such security deposit until such time as 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 Buyer when due. Buyer shall replenish the cash security deposit to the amount equal to two (2) times the average amount of the previous twelve (12) monthly invoices to Buyer in the event Seller applies any portion of the deposit to any amounts not paid 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 thirty (30) Days after the earlier of the date on which construction of the Facility commences or the date upon which the full 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 Buyer 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 Buyer 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 Buyer, and 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 Buyer by providing a Testing plan at least thirty (30) Days prior to the first anticipated Test Date, updates to such Testing plan on a bi-weekly basis, or on a weekly basis if the Test Energy during Testing is schedule to change from the prior Testing plan, 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"). Seller shall be allowed to engage a third party to perform such Testing at Seller's expense. Representatives of Buyer shall have the right to be present at all such Testing. Seller shall promptly notify Buyer of any changes to the Test Date or the date of any Commissioning Tests relating to the Facility in order that Buyer may arrange for its representatives to attend.

(B) The results of Commissioning Tests, including the use of testing consistent with either standard ASTM E2848-13(2018) (Standard Test Method for Reporting Photovoltaic Non-Concentrator System Performance) or IEC 61724-2 (Photovoltaic system performance - Part 2: Capacity evaluation method), shall determine the Facility's Demonstrated Capacity. Seller may conduct multiple Commissioning Tests to determine the highest Demonstrated Capacity, and can conduct Commissioning Tests at or around the Build-Out Date, if Seller elects its option in Section 3.3(B).

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

10.3 Operation and Maintenance of the Facility. Seller shall at all times following the Commercial Operation Date 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 and the Interconnection Agreement.

10.4 Scheduled Maintenance. On or before the date that is ninety (90) Days prior to the Commercial Operation Date and, thereafter, by October 1 of each Year, Seller shall deliver to Buyer and SCC the good-faith non-binding 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, Buyer 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 Buyer and SCC. Seller shall not unreasonably refuse to change the schedule of Scheduled Maintenance Outages if requested to do so by Buyer 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 or cause scheduling conflicts with the operation and maintenance dispatch schedules established between Seller and its contractors prior to such request by Buyer.

(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.

(A) 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 Buyer 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 Buyer to the extent reasonably possible. Seller shall use Prudent Industry Practices to avoid Additional Maintenance Outages during the Non-Scheduled Maintenance Period.

(B) Notwithstanding Section 10.5(A), Additional Maintenance Outages that consist of (i) washing photovoltaic panels to improve production of the Facility; or (ii) maintenance that can be performed to resolve an issue within a period of 48 hours or less, may be performed by Seller upon written notice to Buyer, provided that such short-term maintenance described in clause (ii) may only be performed upon written notice alone up to five (5) times per year, after which such maintenance will be subject to the requirements of 10.5(A).

#### 10.6 Access to and Inspection of Facility.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility for the purposes of inspecting the Facility

consistent with Prudent Industry Practices. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Facility in any way. Buyer shall abide by Seller's generally-applied safety procedures and rules while visiting the Site.

(B) No inspections of the Facility, whether by 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 Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Facility. Any inspection of Seller's property or equipment by Buyer or any review by Buyer or consent by 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.

## **ARTICLE 11**

### **Security**

11.1 Seller Security. Within ten (10) Business Days after the satisfaction of the Tier 1 Buyer's CPs, Seller shall cause the Seller Credit Support to be provided to Buyer. The "Seller Credit Support" shall be maintained throughout the term of this Agreement and take the form of (i) a Letter of Credit or (ii) a guaranty, substantially in the form of Exhibit D, from an Affiliate of Seller with an Investment Grade Rating. The Seller Credit Support shall be an amount equal to the product of the Buyer Percentage, multiplied by \$██████ per MWac of Expected Facility Capacity (until the Commercial Operation Date, after which it shall be based on the Facility Capacity) (the "Required Seller Credit Support Amount"). Seller may change the form of Seller Credit Support from time to time so long as such credit support is reasonably acceptable to Buyer and there is no lapse in Seller Credit Support. Seller shall replenish the Seller Credit Support to the Required Seller Credit Support Amount in the event Buyer collects or draws down any portion of the Seller Credit Support after the Commercial Operation Date for any reason permitted under this Agreement (other than to satisfy a Termination Payment), until the following have occurred: (a) the Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events (or in connection with any change or replacement of the Seller Credit Support), Buyer shall promptly return to Seller the unused portion of Seller Credit Support.

11.2 Effect of Security. Nothing in this Article 11 or any security agreement 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 (except Test Energy) by Seller to a third party, or diversion by Seller for any use of Solar Energy Output committed to Buyer by Seller, other than during any Event of Default of Buyer or during any period during which 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 Buyer shall constitute an Event of Default of Seller.

(C) Seller's failure to cause, as required in Section 4.1(G), the Seller Credit Support to be replaced, amended or restored, such that the aggregate amount of the Seller Credit Support is equal to the Required Seller Credit Support Amount that is not cured within thirty (30) Days after Seller's receipt of notice of such failure from Buyer shall constitute an Event of Default of Seller.

(D) Seller's material noncompliance with Section 10.3 that is not cured within sixty (60) Days after Seller's receipt of notice of such material noncompliance from Buyer shall constitute an Event of Default of Seller; provided that such material noncompliance must, in order to constitute an Event of Default as described in this Section 12.1(D), consist of one or more acts or omissions of Seller described in Buyer's notice to Seller regarding such material noncompliance. For the avoidance of doubt, mere failure to meet Guaranteed Availability shall not constitute material noncompliance for purposes of this Section 12.1(D).

(E) 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 Buyer 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 Buyer;
- (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; or
- (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 Buyer.

(F) 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.

(G) 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 Buyer.

(A) Any of the following shall constitute an Event of Default of 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 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 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 of Seller or Buyer 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, which such notice shall be delivered on or before the date that is thirty (30) Days after the expiration of the applicable cure period, if any, upon which this PPA shall terminate (the "Early Termination Date"). Neither Buyer nor Seller 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, and if a Party fails to deliver a timely notice of termination, the right of the non-defaulting Party to

terminate with respect to the Event of Default that gave rise to the right to terminate, but not a repetition of such Event of Default, shall be deemed waived.

(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 (a “Termination Payment”). Such Termination 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, Buyer understands and agrees that Seller may not be able to sell the Apportioned Solar Energy Output on a commercially reasonable basis, and therefore Seller would not be able to mitigate its losses by selling the Apportioned Solar Energy Output to a third-party, and therefore its losses would equal the net present value (determined using a discount rate of seven percent (7%)) at the time of termination of all Apportioned Solar Energy Output that would have been produced from the date of termination of the PPA through the end of the Term (had the PPA not been terminated). If the PPA is terminated by Seller under this Section 12.4 during the period prior to the depreciation period that applies to, or that Seller (or its Affiliates) elects for, the property constituting the Facility (but in no event shorter than seven (7) years and not longer than twelve (12) years following the Commercial Operation Date), Seller’s losses will include any anticipated recapture of Tax Credits (if any) and lost depreciation. After Buyer makes a termination payment to Seller, if Seller is able to enter into new arrangements to sell the Apportioned Solar Energy Output and Apportioned Renewable Energy Benefits of the Facility within the one hundred eighty (180) Day period after the effective date of such termination, then Seller shall recalculate the termination payment based on such new arrangements for any period that overlaps with the twenty (20) year period following the Commercial Operation Date and shall reimburse Buyer in the amount of the reduced termination payment; provided, however that Seller shall be entitled to account for any direct costs associated with entering into and performing such new arrangements, but not operating costs of the Facility other than such incremental operating costs as result from such new arrangements, and reduce any reimbursement accordingly.

(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)), Buyer’s cost-to-cover losses shall be calculated using the weighted average of the Avoided Energy Cost based on the Apportioned Solar Energy Output of the Facility over the three hundred sixty-five (365) Day period prior to the effective date of termination as the replacement cost of electricity, and using the weighted average of the LD REC Input based on the Solar Energy Output of the Facility over the three hundred sixty five (365) Day period prior to the effective date of termination as the replacement cost of

Apportioned Renewable Energy Benefits. Such determination of Buyer's losses shall be based on the net present value (determined using a discount rate of seven percent (7%)) 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 the Termination Payment Damages Cap net of amounts collected from the Seller Credit Support.

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

12.9 Buyer Agent.



(A) Subject to the exceptions set forth in Section 12.9(B), by executing and delivering this Agreement, Buyer shall have irrevocably authorized and appointed Buyer's Agent to act on Buyer's behalf with respect to this Agreement and to: (i) give and receive notices and communications; (ii) execute and deliver, as Buyer's agent, all documents necessary or desirable to carry out the intent of this Agreement; (iv) make all elections contemplated by this Agreement; and (v) take all actions necessary or appropriate in the good faith judgment of Buyer for the accomplishment of the foregoing. Seller shall be entitled to deal exclusively with the Buyer's Agent on all matters relating to this Agreement and shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed by Buyer's Agent on as agent for Buyer, and on any other action taken or purported to be taken by Buyer's Agent as agent for Buyer, as being fully binding upon Buyer. Notices or communications to or from Buyer's Agent shall constitute notice to or from Buyer. Any decision or action taken or purported to be taken by Buyer's Agent as agent for Buyer hereunder, including any agreement between Buyer's Agent as Buyer's agent and Seller relating to the defense, payment or settlement of any claims for indemnification hereunder, shall constitute a decision or action of Buyer and shall be final, binding and conclusive upon Buyer, and Seller to the same extent as if made directly by Buyer. Subject to Sections 12.9(B) and 12.9(C), the provisions of this Section are independent and severable, are irrevocable and coupled with an interest and shall not be terminated by any act of Buyer, or by operation of law.

(B) Notwithstanding Section 12.9(A):

- (i) Buyer may, by thirty (30) Day's written notice to Seller, designate an Affiliate of Buyer other than Buyer's Agent, and such notice shall have the same effect with respect to such Affiliate as executing and delivering this Agreement has with respect to Buyer's Agent under Section 12.9(A); provided, Seller may reject such designation of an Affiliate if such Affiliate (i) has not been designated to serve an equivalent role under the Identified Affiliate PPA, (ii) is subject to an event that is the equivalent of Credit Event; or (iii) is the equivalent of a defaulting party with respect to an event equivalent to a Buyer Event of Default.
- (ii) While invoices from Seller shall be only sent to the Buyer's Agent as set forth in Section 9.1, Buyer may separately remit payment to Seller.

### **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 13.1.

13.2 Records. Seller and Buyer 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 Buyer 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 Buyer, 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 Buyer 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 Buyer, Seller shall provide real-time electronic access to Buyer of all solar irradiance and meteorological data collected at the Facility and corresponding unit availability data as well.

## **ARTICLE 14**

### **Force Majeure**

#### **14.1 Definition of Force Majeure Event.**

(A) “Force Majeure” shall mean a cause or event that prevents, restricts, delays or impacts either Party, in whole or in part, from performing any of its obligations under this PPA including, acts of God; epidemics that are the subject of an emergency declaration by a Governmental Authority (or other declaration by a Governmental Authority regarding such epidemic that prevents, restricts, delays or impacts the affected Party, in whole or in part, from performing any of its obligations under this PPA), pandemics declared as such by the World Health Organization or a Governmental Authority (but as applied to the COVID-19 pandemic, only with respect to impacts occurring after the Effective Date), 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, including but not limited to the failure of the main power transformer and other long-lead time equipment, so long as such failure is not caused by Seller’s acts and omissions or failure to follow Prudent Industry Practices; 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(A) 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 timely issue in accordance with Applicable Laws (i) any permit serving as the basis for a Buyer’s CP or Seller’s CP or (ii) any Ministerial Permit necessary for the commencement of construction or the achievement of Commercial Operation shall not constitute Force Majeure unless Buyer or Seller, as the case may be, timely filed for and diligently pursued the issuance of such permit.

(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 uninterrupted for a period of three hundred sixty-five Days from its inception, either Seller or Buyer 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 promptly by telephone and/or email, and in writing, within five (5) Days of actual knowledge of such occurrence, of (to the extent known) 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. Upon receipt of such notice, the non-claiming party shall diligently review a claim and promptly report back approval, rejection, or request for information or clarification. In connection with such notice and review, the claiming Party shall provide any additional, reasonably requested materials required by the non-claiming Party to validate the occurrence and impacts of such Force Majeure. A Party claiming that a Force Majeure event has occurred shall not be entitled to any relief therefor unless and until such notice is provided, but, for clarity, such relief will extend back to the date the Force Majeure event first occurred regardless of any delayed notice, except to the extent Seller's delay in providing such notice to Buyer beyond five (5) Days prejudices Buyer or causes Buyer an adverse effect. 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 of its actual knowledge thereof.

14.4 Duty to Mitigate. The Party claiming that a Force Majeure event has occurred shall exercise commercially reasonable 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 Buyer 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 Buyer 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 a mandatory prepayment thereunder and the cost of Restoration of the Facility following a Force Majeure, net of insurance proceeds, does not exceed [REDACTED] percent ([REDACTED]%) of the original cost of the Facility, 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 a mandatory prepayment thereunder and the cost of Restoration of the Facility following a Force Majeure, net of insurance proceeds, exceeds [REDACTED] percent ([REDACTED]%) of the original cost of the Facility then Seller shall have the right to terminate this PPA without further liability to Buyer.

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 one hundred eighty (180) Days after the date that it becomes obligated to

proceed with such Restoration, then either Seller or Buyer 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 Buyer within sixty (60) Days after provision of such notice was required. Buyer 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 Buyer, 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 Buyer 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 and Warranties. Seller hereby represents and warrants to Buyer as follows as of the Effective 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 Buyer 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 or the Financing Documents) 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 Buyer, except as such enforceability may be limited by (i) public policy or (ii) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights.

(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 that are not yet necessary or required to be obtained or that are identified as Seller's Conditions Precedent, 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 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.

15.2 Buyer's Representations, Warranties, and Covenants. Buyer hereby represents and warrants to Seller as follows as of the Effective 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. 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, except as such enforceability may be limited by (i) public policy or (ii) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights.

(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 significant earth-moving or civil work on the Facility at the Facility site, and thereafter, on or before June 1 of each Year during the Term, provide Buyer with one (1) copy of insurance certificates reasonably acceptable to Buyer 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 Buyer 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 Buyer, in its reasonable discretion, deem acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). 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 Buyer and its 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 Buyer 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 Buyer, its Affiliates, and their respective officers, directors, and employees as additional insureds only to the extent Buyer (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) Buyer and Seller shall each be responsible for its own facilities. Buyer and Seller shall each be responsible for ensuring adequate safeguards for Buyer, Buyer's customers, and personnel and equipment belonging to Buyer, 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 Buyer, its 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) The Buyer 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 either Buyer of its covenants, representations, and warranties or obligations hereunder; or
- (ii) the negligence or willful misconduct of either 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 (the "Indemnifying Party") 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. Each Party shall materially comply with all Applicable Laws in effect or that may be enacted during the Term, the violation of which could have a material adverse effect on the ability of such to perform its obligations under this PPA. As of the Commercial Operation Date, Seller shall have timely submitted its “exempt wholesale generator” certification as such term is defined in the regulations of the Federal Energy Regulatory Commission.

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 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 Buyer's Consent. 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 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 Buyer 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 Buyer’s 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 Buyer shall be permitted to make any necessary disclosures of Confidential Information in connection therewith (including any ongoing requirements), provided that Buyer 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 Buyer shall each be entitled to disclose Confidential Information as permitted under Applicable Law. In such event, Seller and/or Buyer 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 and Financing Parties (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.

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IN WITNESS WHEREOF, the Parties have executed this PPA.

Seller:

**Song Sparrow Solar LLC**

By: 

Name: Craig Cornelius\_\_\_\_\_

Title: President\_\_\_\_\_

Date: \_\_\_\_\_

Buyer:

**Kentucky Utilities Company**

By: 

Name: David S. Sinclair

Title: VP – Energy Supply & Analysis

Date: 2-24-2023



**EXHIBIT A**

**NOTICE ADDRESSES**

**To Seller:**

All Notices:

Song Sparrow Solar LLC  
4900 N. Scottsdale Rd  
Scottsdale, AZ 85251  
Att: Asset Management  
Email: [REDACTED]

With a copy to:

Clearway Energy Group  
5780 Fleet Street, Suite 130  
Carlsbad, CA 92008  
Attn: General Counsel

All Invoices:

Attn: Accounts Payable  
[REDACTED]

Scheduling:

Attn: Clearway Energy RPMC  
Phone: [REDACTED]  
Email: [REDACTED]

Payments:

Attn: Asset Management  
Email: [REDACTED]

**To Buyer/Buyer's Agent (through the following):**

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 Counsel  
James J. Dimas

PPL Services Corporation  
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, property damage liability, contractual, products liability and completed operations. 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 replacement value subject to sublimits prudent to industry practice. 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

### PRODUCTION MODEL VARIABLES AND METHODOLOGY

The “Production Model” shall be the energy production model prepared by Seller (and reasonably agreed to by Buyer or confirmed as reasonable by an independent engineer), and as may be updated from time to time, in each case pursuant to Section 8.3(A), which model shall include as matters that can either be fixed or variable inputs (and such other fixed or variable inputs as are reasonable to accurately reflect the Expected Amount or an amount of Deemed Delivered Energy):

- A. The parameters of the Facility on an as-built basis;
- B. The solar module manufacturer PAN file;
- C. The inverter manufacturer OND file;
- D. Meteorological station data:
  - a. global horizontal irradiance;
  - b. plane of array irradiance;
  - c. albedo irradiance;
  - d. weather conditions; and
  - e. wind speed.
- E. Annual solar panel degradation.

The methodology for running the Production Model shall be established by the Seller (and confirmed by the independent engineer selected by Seller, and approved by Buyer in writing), using the engineer’s standard methodology to calculate the Expected Amount or an amount of Deemed Delivered Energy; provided that when using the Production Model to calculate an Expected Amount or an amount of Deemed Delivered Energy, actual weather conditions at the Site measured by the on-site measurement equipment based on the average of the readings from all installed measurement stations) shall be used for such calculation such that the Expected Amount or an amount of Deemed Delivered Energy is calculated on a weather-adjusted basis; provided that the Expected Amount and Deemed Delivered Energy shall only be measured over the period of time that solar irradiance is of an amount that permits the Facility to generate Solar Energy.

## EXHIBIT D

### Form of GUARANTY AGREEMENT

This Guaranty Agreement (“Guaranty”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_, a \_\_\_\_\_ corporation (“Guarantor”), in favor of **KENTUCKY UTILITIES COMPANY**, a Kentucky and a Virginia corporation (the “Beneficiary”).

#### RECITALS:

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

G. Beneficiary and Counterparty are parties to that certain Power Purchase Agreement dated as of February [\_\_\_], 2023 (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 and payable or which may hereafter become due and payable 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 ten (10) 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: Kentucky Utilities Company  
220 West Main Street, 7<sup>th</sup> 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: \_\_\_\_\_

**FIRST AMENDMENT TO  
POWER PURCHASE AGREEMENT**

This **FIRST AMENDMENT TO POWER PURCHASE AGREEMENT** (this "Amendment") is entered into as of ~~June 20~~, 2023 (the "Effective Date"), by and between Kentucky Utilities Company, a Kentucky and Virginia corporation ("Buyer") and Song Sparrow Solar LLC, a Delaware limited liability company ("Seller"), each individually a "Party" and collectively, the "Parties".

**RECITALS**

**WHEREAS**, the Parties entered into that certain Power Purchase Agreement, dated February 24, 2023 (the "Agreement");

**WHEREAS**, the Parties desire to amend the Agreement as set forth herein; and

**WHEREAS**, the Parties are entering into this Amendment in accordance with Section 20.7 of the Agreement to implement such amendments.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Amendments to the Agreement.**

a. The definition of "Tier 1 CP Confirmation Notice Deadline," defined in Section 1.4 of the Agreement, is hereby amended by replacing "May 30, 2023" with "November 27, 2023" and by replacing "October 31, 2023" with "February 29, 2024."

b. Section 6.1(A) of the Agreement is hereby amended by replacing "October 31, 2023" with "February 29, 2024."

c. Section 6.1(B) of the Agreement is hereby amended by replacing "March 31, 2024" with "July 31, 2024."

d. Section 6.1(C) of the Agreement is hereby amended by replacing "December 31, 2024" with "April 30, 2025" and by replacing "March 31, 2024" with "July 31, 2024."

e. Section 6.2(A) of the Agreement is hereby amended by replacing "May 30, 2023" with "November 27, 2023."

f. Section 6.3(B) of the Agreement is hereby amended by replacing "March 31, 2024" with "July 31, 2024" and by replacing both references to "May 30, 2024" with "September 29, 2024."

g. Section 6.3(C) of the Agreement is hereby amended by replacing both references to "December 31, 2024" with "April 30, 2025" and by replacing both references to "March 1, 2025" with "June 29, 2025."

**2. General.**

a. **Definitions: Interpretation.** All capitalized terms used in this Amendment (including the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

b. Agreement Otherwise Not Affected. Except for the amendments pursuant hereto, the Agreement remains unchanged and in full force and effect and is hereby ratified and confirmed in all respects. The execution and delivery of, or acceptance of, this Amendment and any other documents and instruments in connection herewith by either Party shall not be deemed to create a course of dealing or otherwise create any express or implied duty by it to provide any other or further amendments, consents, or waivers in the future.

c. Entire Agreement. This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication or prior writings related thereto.

d. Binding Effect. This Amendment shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns.

e. No Reliance. Each Party hereby acknowledges and confirms that it is executing this Amendment on the basis of its own investigation and for its own reasons without reliance upon any agreement, representation, understanding or communication by or with the other Party or its agents, representatives or attorneys not set forth within the Agreement or this Amendment.

f. Costs and Expenses. Each Party shall be responsible for any costs and expenses incurred by such Party in connection with the negotiation, preparation, execution and delivery of this Amendment and any other documents to be delivered in connection herewith.

g. Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY, CONSTRUED, AND ENFORCED UNDER THE LAWS OF THE COMMONWEALTH OF KENTUCKY WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER STATE.

h. Amendments. This Amendment may not be modified, amended or otherwise altered except by written instrument executed by the Parties' duly authorized representatives.

i. Interpretation. This Amendment is the result of negotiations between and has been reviewed by counsel to each of the Parties and is the product of all Parties hereto. Accordingly, this Amendment shall not be construed against either Party merely because of such Party's involvement in the preparation hereof.

j. Counterparts. This Amendment may be executed and delivered in counterparts, all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Amendment by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

*[Signatures appear on the following page.]*

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed as of the Effective Date.

**SONG SPARROW SOLAR LLC, a Delaware limited liability company**

Sign: Valerie F. Wooley  
Print: Valerie Wooley  
Title: Vice President

**KENTUCKY UTILITIES COMPANY, a Kentucky and Virginia corporation**

Sign: David S. Sinclair  
Print: David S. Sinclair  
Title: VP Energy Supply & Analysis

*JS*

**POWER PURCHASE AGREEMENT**  
**AMONG**  
**SONG SPARROW SOLAR LLC**  
**LOUISVILLE GAS AND ELECTRIC COMPANY**  
**FEBRUARY 24, 2023**

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

**Power Purchase Agreement  
among  
Song Sparrow Solar LLC,  
Louisville Gas and Electric Company**

This Power Purchase Agreement (this "PPA") is made as of February 24, 2023 ("Effective Date"), by and among (i) **Song Sparrow Solar LLC** ("Seller"), a Delaware limited liability company with a principal place of business at 4900 N. Scottsdale Rd, Scottsdale, AZ 85251, and (ii) **Louisville Gas and Electric Company** ("LG&E"), a Kentucky corporation with a principal office at 220 West Main Street, Louisville, Kentucky 40202. LG&E is sometimes hereinafter referred to as "Buyer".

**WHEREAS**, Seller desires to develop, design, construct, own or lease, and operate a solar photovoltaic electric generating facility in Ballard County, Kentucky with an expected total maximum power output capacity of approximately but not more than the Expected Facility Capacity 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 Buyer at the Point of Interconnection a portion of the Solar Energy Output generated by the Facility and any Renewable Energy Benefits associated with such portion of the 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.

(I) If an index, credit rating or other published matter referred to herein ceases to be calculated or published in a readily available manner, or the index or other published matter cannot be reasonably calculated based on the information available, Seller shall designate another reasonable and substantially-equivalent method of evaluating the subject matter of such index, credit rating or other published matter (or calculating a reasonable and substantially-equivalent proxy for such index, credit rating or other published matter), subject to Buyer’s approval not to be unreasonably withheld or delayed.

## 1.2 Interpretation with Interconnection Agreement.

(A) The Parties recognize that Seller has entered 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 Buyer’s 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 shall be deemed to be a separate entity and separate contracting party from Buyer whether or not the Interconnection Agreement is entered into with Buyer or an Affiliate of Buyer, in its capacity as the Interconnection Provider. Seller acknowledges that Buyer, acting in its capacity as the purchaser hereunder, has no responsibility for or control over

Interconnection Provider, and is 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 Buyer or an Affiliate of 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 Buyer or an Affiliate of 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 Buyer’s rights, duties and obligations under this PPA.

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

“Abandonment” means, after the Commercial Operation Date, the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer to a Financing Party or as otherwise permitted under this Agreement.

“Acceptable Credit Bank” means a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having assets of at least [REDACTED] (\$ [REDACTED]) and a minimum long term issuer rating that is equal to or better than A- from S&P, A3 from Moody’s, or A- from Fitch Group; provided, if, in seeking a Letter of Credit for use as the Seller Credit Support, Seller, despite its commercially reasonable efforts, unable to obtain such Letter of Credit from a bank with a minimum long term issuer rating described above in this definition, a bank with an Investment Grade Rating and which otherwise meets the terms of this definition shall constitute an Acceptable Credit Bank for purposes of such Letter of Credit.

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

“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).

“Apportioned Renewable Energy Benefits” means that portion of the Renewable Energy Benefits that is attributable to the Apportioned Solar Energy Output.

“Apportioned Solar Energy Output” means that portion of the Solar Energy Output that results from Multiplying the Solar Energy Output by the Buyer Percentage.

“Apportioned Test Energy” means that portion of the Test Energy that is attributable to the Apportioned Solar Energy Output.

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

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

“Availability Daily Damages” means, for each Availability Unsatisfactory Day in an Availability Damage Period, the amount equal to the following: (1) the percentage resulting from subtracting the Availability from the Guaranteed Availability on such Availability Unsatisfactory Day; multiplied by (2) the Expected Amount during such Availability Unsatisfactory Day; multiplied by (3) the LD Monetary Factor for such Availability Unsatisfactory Day determined in accordance with Section 8.3(C); multiplied by the Buyer Percentage. (By way of example only, if, on a particular Availability Unsatisfactory Day, the Availability is twenty percent (20%), the Expected Amount is 500 MWh, and both the LD Avoided Cost Input for such Availability Day and the LD REC Input for such Availability Day are greater than \$█/MWh, the Availability Daily Damages for such Availability Unsatisfactory Day would be determined by subtracting the Availability in this example of twenty percent (20%) from the Guaranteed Availability of ninety percent (█%) and multiplying the resulting █ percent (█%) by the Expected Amount in this example of 500 MWh, the LD Monetary Factor of \$█/MWh and the Buyer Percentage to arrive at the Availability Daily Damages: ((█) x 500 x \$█ x 37% = \$█))

“Availability Damage Period” has the meaning ascribed to it in Section 8.3(B).

“Availability Damages” means the aggregate of the Availability Daily Damages for the Availability Unsatisfactory Days in the Availability Damage Period.

“Availability Day” means any Day after the date that is one hundred and eighty (180) Days following the Commercial Operation Date and before the end of the Term.

“Availability LD Cure Period” means, with regard to an Availability Underperformance Notice, the period starting the Day after such Availability Underperformance Notice is received in writing by Seller and ending on the Day that is thirty (30) Availability Days following the receipt by Seller of such Availability Underperformance Notice; 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 of any 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 Buyer’s Standard Rate Rider LQF or a successor provision of Buyer’s tariffs, expressed in Dollars. Accordingly, on the Effective Date, the Avoided Energy Cost is \$23.89/MWh.

“Balancing Authority” has the meaning ascribed in Interconnection Provider’s open access transmission tariff.

“Build-Out Date” has the meaning ascribed to it in Section 3.3(B).

“Business Day” means any 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” is defined in the preamble of this Agreement, and includes such Person’s permitted successors and assigns.

“Buyer Curtailment Order” means an instruction from Buyer to Seller to reduce Solar Energy Output from the Facility by the amount, and for the period of time set forth in such instruction; provided, that, for the avoidance of doubt, Buyer Curtailment Order shall not include (i) any instruction to reduce Solar Energy Output from the Facility from the Interconnection Provider to Seller under the Interconnection Agreement or (ii) any instruction from Buyer to Seller to reduce Solar Energy Output from the Facility as



the result of an instruction to reduce Solar Energy Output from the Facility given to Buyer by the Interconnection Provider, Reliability Coordinator or Balancing Authority, under Interconnection Provider's open access transmission tariff; provided, the references to instructions in this definition shall refer to instructions from or to, as the case may be, Buyer's Agent.

"Buyer Curtailment Period" means a period of time during which Seller reduces Solar Energy Output from the Facility pursuant to or as a result of a Buyer Curtailment Order; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Buyer Entities" has the meaning ascribed to it in Section 17.1(B).

"Buyer's Agent" shall mean LG&E and KU Services Company, a Kentucky corporation, and Affiliate of Buyer.

"Buyer's Conditions Precedent" is defined in Section 6.2.

"Buyer Percentage" means 37%, the percentage of the Solar Energy Output to be purchased hereunder by Buyer which shall be stated in decimal form as .37 for purposes of calculations set forth in this Agreement.

"Buyer's Tier 1 CP" is defined in Section 6.2.

"Buyer's Tier 1 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 approvals from the PSC.

“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 Buyer 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” means, with regard to Buyer: (i) 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, (ii) the rating assigned to Buyer’s senior unsecured long-term debt obligations (not supported by third party credit enhancements) or, if Buyer does not have a rating for its senior unsecured long-term debt, then the rating assigned to Buyer by a Credit Rating Agency, is reduced to below an Investment Grade Rating; or (iii) if Buyer does not make payment to Seller when due more than once in any twelve (12) Month period and 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 Standard & Poor’s (S&P), Moody’s and Fitch Group; provided, that another Person may become a Credit Rating Agency or CRA if, and only if, a credit rating provided by such Person is designated and approved in accordance with Section 1.1(l).

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

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

“Daily Delay Damages” means the product of \$█ per MWac of Expected Facility Capacity per Day multiplied by the Buyer Percentage.

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

“Deemed Delivered Energy” means, with respect to a period, the amount of Solar Energy (or portion thereof) that the Facility could have made available at the Point of Interconnection during such period, calculated using the Production Model, and assuming that the Facility (excluding any portions of the Facility that are, during such period, (i) mechanically inoperable, (ii) undergoing a Forced Outage or Excused Maintenance Outage, and/or (iii) inoperable as a result of a Force Majeure event) operated at 100% of the Facility Capacity in MWac throughout such period, but that is not so made available due to (i) Buyer Curtailment Order or (ii) the failure of Buyer to schedule or take Solar Energy at the Point of Interconnection in accordance with this PPA, and includes Curtailed Energy.

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

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

“Discretionary Permit” means a permit that the issuance of which constitutes a discretionary act or discretionary function, as defined under Applicable Laws.

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

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

“Domestic Content Adder” means that increase in ITC or PTC credit rate for “domestic content” provided under Section 48(a)(12) of the Code (for the ITC) and Section 45(b)(9) of the Code (for the PTC).

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

“Effective Date” has the meaning ascribed to it in the Preamble.

“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 circumstance (i) constituting an “Emergency Condition” as such term is defined in the Interconnection Agreement and (ii) that is declared by the Interconnection Provider under and in accordance with the Interconnection Agreement; provided, if at any time the Interconnection Agreement does not define “Emergency Condition,” the meaning of the most closely analogous term in the Interconnection Agreement or, in the absence of an analogous term in the Interconnection Agreement, the meaning of “Emergency Condition” set forth in the Large Generator

Interconnection Agreement as of the Effective Date shall apply for purposes of clause (i) of this definition.

“Energy Communities Adder” means that increase in ITC or PTC credit rate for “energy communities” provided under Section 48(a)(14) of the Code (for the ITC) and Section 45(b)(11) of the Code (for the PTC).

“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” means an event described as such in Section 12.1 or 12.2.

“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 ■■■ percent (■■■%) 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 Year of Scheduled Maintenance Outages during the Non-Scheduled Maintenance Period.

“Expected Amount” means, with respect to a period, the quantity of Solar Energy Output expressed in MWh that would have been produced by the Facility during such period, as calculated by the Production Model, 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.

“Expected Facility Capacity” means 104 MWac, as may be adjusted pursuant to Section 3.3(A) or Section 3.3(B).

“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, at and after the Commercial Operation Date, the Demonstrated Capacity as of the Commercial Operation Date, provided that if Seller elects its option in 3.3(B), the Facility Capacity at and after the Build-Out Date shall be the Demonstrated Capacity as of the Build-Out Date.

“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) related to the third party indebtedness used to fund construction costs 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 by and at the discretion of Seller or its Affiliates in connection with or related to design, development, construction, installation, Testing, Commissioning, operation, maintenance or the direct or indirect ownership, use or leasing 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, equity (including equity financing related to the monetization of Tax Credits and accelerated depreciation by equity investment, issuance of cash in lieu of Tax Credits and/or sale-leaseback agreements), or interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any debt or equity financing, or any combination thereof, in each case for the design, development, construction, installation, Testing, Commissioning, operation, maintenance or the direct or indirect ownership, use or leasing 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.

“Future Environmental 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, having a different source context from Renewable Energy Benefits that did not exist as of the Effective Date (whether such source is statutory or from an international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method; provided, for the avoidance of doubt, Future Environmental Benefits do not include any Renewable Energy Benefits.

“Generator Interconnection Request” has the meaning assigned to it in the Interconnection Provider’s open access transmission tariff.

“Governmental Approval” means, subject to the last sentence of this definition, 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 Buyer, the execution, delivery or performance of this PPA or the procurement pursuant to this PPA of the Apportioned Solar Energy Output and the Apportioned 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.

“GATS” means the Generation Attribute Tracking System administered by PJM Environmental Information Services (PJM EIS)

“Guaranteed Availability” has the meaning ascribed to it in Section 8.3(B).

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

“Identified Buyer Affiliate” means Kentucky Utilities Company, a Kentucky and Virginia corporation that is an Affiliate of Buyer.

“Identified Buyer Affiliate PPA” means that certain power purchase agreement entered into between Seller and Identified Buyer Affiliate dated as of February \_\_, 2023.

“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.

“Indemnifying Party” has the meaning ascribed to it Section 17.3.

“Independent Transmission Organization” or “ITO” means an entity authorized by FERC to administer Buyer’s 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 Customer” has the meaning assigned to it in the Interconnection Provider’s open access transmission tariff.

“Interconnection Delay” means any action or inaction by the Interconnection Provider, ITO, RE or Reliability Coordinator that results in the inability of the Facility to interconnect to Interconnection Provider’s System including (a) the Interconnection Provider’s Interconnection Facilities are not complete and ready for the Facility to connect to Interconnection Provider’s System and thereafter make available Solar Energy and Renewable Energy Benefits at the Point of Interconnection, (b) Interconnection Provider’s breach of the Interconnection Agreement, and (c) the Interconnection Provider’s delays in responding to or attending inspections or other meetings intended for Interconnection Provider to provide “permission to operate” to the Facility.

“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 (including any reliability, network, affected system and other upgrades).

“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.

“Investment Grade Rating” means, with respect to a Person, a minimum long term issuer rating that is equal to or better than BBB- from S&P, Baa3 from Moody’s; or BBB- from Fitch Group; provided that no Credit Rating Agency has a long term issuer rating for such Person that is lower than the ratings specified above.

“ITC” means the investment tax credit established pursuant to Section 48 of the Code.

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

“Large Generating Facility” has the meaning assigned to it in the Interconnection Provider’s open access transmission tariff.

“Large Generator Interconnection Agreement” or “LGIA” shall mean the form of interconnection agreement applicable to a Generator Interconnection Request pertaining to a Large Generating Facility that is included in the Interconnection Provider’s open access transmission tariff.

“LD Avoided Cost Input” means with respect to an Availability Day the greater of (i) zero or (ii) the dollar amount that results from subtracting the dollar amount in the Solar Energy Payment Rate from the dollar amount in the 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 an amount (expressed in \$/MWh) equal to the average of at least two National Green-e price quotes for a REC obtained by Seller from nationally recognized brokers for the vintage that matches the delivery Year. The price quotes shall be for the same Day as the Availability Day; provided, if the Availability Day falls on a Day on which the price quotes are not reasonably obtainable, the price quotes for the most recent prior Day on which price quotes were obtainable will be used.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit (i) issued by an Acceptable Credit Bank; (ii) to which Buyer is the beneficiary; (iii) having a stated expiration date of not earlier than 364 Days (or such longer term as may be commercially available) after the date of the original issuance or any renewal thereof; (iv) that automatically renews or permits Buyer on the signature of an authorized representative of Buyer to draw on sight all or any portion of the stated amount if not renewed on or prior to the thirtieth (30th) Day prior to any expiration date of the letter of credit, including the final expiration date; (v) that is payable or negotiable at an office of the issuing bank (or a correspondent bank thereof) in New York City or such other place



as the Parties may agree; (vi) which is payable in United States Dollars in immediately available funds; and (vii) that is governed by the International Standby Practices, International Chamber of Commerce Publication No. 590 (ISP98), and any amendments or revisions thereto, and, to the extent not governed thereby, the laws of the State of New York; and (viii) that is drawable upon issuance of a drawing certificate signed by an authorized representative of Buyer stating that Buyer is entitled to be paid under this Agreement.

“LG&E” has the meaning set forth in the Preamble.

“LGIP” shall mean the interconnection procedures applicable to a Generator Interconnection Request pertaining to a Large Generating Facility that are included in the Interconnection Provider’s open access transmission tariff.

“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 the amount, expressed in MWac, equal to ninety percent (90%) of the Expected Facility Capacity as of the Effective Date (i.e., before any adjustment pursuant to Section 3.3(A)).

“Ministerial Permit” means a permit that the issuance of which constitutes a ministerial act or ministerial function, as defined under Applicable Laws.

“Month” means a calendar month.

“Monthly Billing Period” means the period during any particular Month in which either Test Energy and/or Solar Energy Output has been generated by Seller for Buyer and delivered to the Point of Interconnection for sale to Buyer, 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.

“MRETS” means the MISO’s Midwest Renewable Energy Tracking System.

“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.

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

“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 Apportioned 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” has the meaning assigned to it in Exhibit C.

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

“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-scale solar electric generation stations of a 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.

“PTC” means the production tax credit established pursuant to Section 45 of the Code.

“RE” means any regional entity with jurisdiction over Seller as a generator of electricity and operator of the Facility, which as of the Effective Date is SERC.

“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(D).

“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, which as of the Effective Date is the Tennessee Valley Authority.

“Renewable Energy Benefits” means (i) any and all Renewable Energy Certificates, (ii) any and all Renewable Energy Benefits Reporting Rights and (iii) any and all renewable and environmental attributes, emissions reductions, credits, offsets, allowances reporting rights and benefits, howsoever entitled, created by any existing (as of the Effective Date) Applicable Law, and any and all other existing (as of the Effective Date) international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto), associated with the production of the Solar Energy Output, whether or not already described in clause (i) or (ii) of this sentence. Renewable Energy Benefits exclude and do not include (i) any Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) any energy, capacity, reliability or other power attributes from the Facility, or (iii) any Future Environmental Benefits.

“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, if enacted, a 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, 2027, subject to adjustment as described in Section 4.1 and 4.3.

“Required Seller Credit Support Amount” has the meaning assigned to it in Section 11.1.

“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).

“SCC” means system control center, the Buyer’s 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 Buyer.

“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(A).

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

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

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

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

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

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

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

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

“Seller Delivery Excuse” shall mean: (i) any breach by Buyer of its obligations under the PPA, (ii) any delay or failure by 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 failure of Buyer (except as a result of a Force Majeure event, Emergency Condition or Seller Event of Default) to accept Solar Energy Output or Renewable Energy Benefits as and when required under this PPA; provided, the references to breach, delay and failure by Buyer in this definition shall be deemed to include such breach, delay or failure by Buyer acting through Buyer’s Agent.

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

“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) any curtailment of the Facility by Buyer (under Buyer Curtailment Order), an ITO, the Interconnection Provider or any other Person; 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 failure to perform or observe any material term or condition of 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 the Facility’s solar electric generating facility.

“Solar Energy Output” means the net unit contingent electric energy generated by the Facility, as measured and expressed in MWh, 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 compliant with the Interconnection Agreement.

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

“Solar Energy Payment Rate” means \$[REDACTED]/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.

“Tax Credits” means the ITC or the PTC, 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.

“Termination Payment” has the meaning ascribed to it in Section 12.4(B).

“Termination Payment Damages Cap” shall mean, as of the date a termination of this Agreement by Buyer under Section 12.4 becomes effective, an amount equal to the product of the Buyer Percentage, multiplied by \$[REDACTED] per MWac of Facility Capacity at such time, decreasing annually by an amount equal to the product of the Buyer Percentage multiplied by \$[REDACTED] per MWac; provided that the Termination Payment Damages Cap shall not be less than the product of the Buyer Percentage, multiplied by \$[REDACTED] per MWac of Facility Capacity at such time.

“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, 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 Buyer at the Point of Interconnection, and purchased by Buyer, all prior to the Commercial Operation Date pursuant to Section 10.2(C) and Section 4.3.

“Test Energy Payment Rate” means 75% of the Solar Energy Payment Rate.

“Test Period Transmission Service” means as-available non-firm secondary network transmission service which would allow energy to flow from the Point of Interconnection to the Buyer’s load.

“Tier 1 CP Confirmation Notice Deadline” means either May 30, 2023 for Buyer’s Tier 1 CP Confirmation Notice, or October 31, 2023 for Seller’s Tier 1 CP Confirmation Notice.

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

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

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

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

“Year” or “Years” means a calendar year or calendar years.

## **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 (the “Term”). 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 Buyer.

### **ARTICLE 3 Facility Description**

3.1 Summary Description. Subject to the satisfaction or waiver of the Seller's Conditions Precedent, Seller shall construct, own, operate, and maintain the Facility and associated equipment having an actual maximum net generating nameplate capacity rating, measured in MWac, of up to the Expected Facility Capacity.

3.2 General Design of the Facility. Subject to the satisfaction or waiver of the Seller's Conditions Precedent and subject to the provisions of Section 4.1, the Facility shall be constructed in accordance with Prudent Industry Practice(s) and in compliance with the terms and conditions of the Interconnection Agreement, Applicable Law, and applicable permits. The Facility shall at all times:

(A) have the required panel space to accommodate metering, generator telemetering equipment and communications equipment;

(B) have remote monitoring facilities; and

(C) have, the greater of 1) no fewer than one (1) location per 25 MWac of Facility Capacity and 2) one (1) met station for every major rectangular region within the plant, with no rectangular region encompassing fewer than 3 inverter blocks, rounded up to the next whole number; and distributed evenly throughout the project site, suitable meteorological stations and solar radiation meters necessary to characterize the solar resource and site ambient conditions, global horizontal irradiance (GHI) (with two sensors per station), tracker-mounted plane of array irradiance sensors at each station (if reasonably possible with the required met station radius), but no fewer than 50% of the met station quantity (rounded up for an odd number of met stations across the plant) temperature, wind speed, pressure and humidity.

3.3 Facility Capacity Adjustment.

(A) Prior to issuance by Seller of full notice to proceed to its EPC contractor, Seller may, on one occasion only, decrease the Expected Facility Capacity by providing Buyer with written notice of such adjustment; provided, however, that Seller may not decrease the Expected Facility Capacity to below the Minimum Demonstrated Capacity without Buyer's prior written consent, which Buyer may withhold in its sole discretion.

(B) If Commercial Operation is achieved at less than the Expected Facility Capacity (but at least the Minimum Demonstrated Capacity), Seller shall have the right to continue completion of the Facility for a period of one hundred eighty (180) Days after the Commercial Operation Date (the expiration of such one hundred eighty (180) Day period, the "Build-Out Date") thereafter in order to achieve Demonstrated Capacity



at a level up to the Expected Facility Capacity. Any such completion activities shall not excuse Seller from its obligations with respect to Guaranteed Availability (provided that the Guaranteed Availability during the period ending on the Build-Out Date shall be determined assuming that the Facility Capacity is equal to the Demonstrated Capacity as of the Commercial Operation Date, and after the Build-Out Date shall be determined using the Demonstrated Capacity as of the Build-Out Date).

## **ARTICLE 4**

### **Commercial Operation**

#### **4.1 Completion by Required Completion Date.**

(A) Seller shall cause the Facility to achieve Commercial Operation 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 on which a Force Majeure event occurs, provided that the Required Commercial Operation Date shall not be extended by more than one hundred eighty (180) days for a Force Majeure event; (ii) each Day after a date on or before which Section 6.2 states that Buyer's Conditions Precedent should occur and before the date that Buyer deliver Buyer's CP Confirmation Notice with respect to such Buyer's Conditions Precedent; (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); and (iv) each Day on which an Interconnection Delay occurs; provided that if any two or more of the foregoing occur on the same Day, such Day shall be counted as just one Day for purposes of such extension.

(C) In the event that Commercial Operation has not occurred by the Required Commercial Operation Date (as extended pursuant to Section 4.1(B) and/or Section 4.3), Seller may either (i) terminate this PPA with immediate effect or (ii) extend the Required Commercial Operation Date (as may have been extended pursuant to Section 4.1(B) and/or Section 4.3) by a period of ninety (90) Days, by notifying Buyer on or before the Required Commercial Operation Date (as may have been extended pursuant to Section 4.1(B) and/or Section 4.3) of its intent to so terminate or further extend the Required Commercial Operation Date.

(D) If Seller so extends the Required Commercial Operation Date pursuant to Section 4.1(C), Daily Delay Damages shall accrue starting on the date that is ninety (90) Days after the Required Commercial Operation Date (as extended pursuant to Section 4.1(B) and/or Section 4.3 but as it stood before extension under Section 4.1(C)) and accrue for every Day thereafter until the earlier to occur of the Commercial Operation Date or the expiration of the ninety (90) Day extension period described in Section 4.1(C). If Commercial Operation has not occurred by the end of such ninety (90) Day extension

period, Buyer may elect to terminate this Agreement with immediate effect upon written notice delivered to Seller within ten (10) Days after the end of such ninety (90) Day extension period. If Buyer fails to so terminate the Agreement, Seller shall have an additional period of up to thirty (30) Days following the end of the ninety (90) Day extension period to achieve Commercial Operation, and if Commercial Operation is not so achieved within such thirty (30) Day period, this Agreement shall terminate automatically without any further action by any Party.

(E) If Commercial Operation has not occurred by the Required Commercial Operation Date (as extended pursuant to Section 4.1(B) and/or Section 4.3) and Seller has, as of the Required Commercial Operation Date, neither (i) terminated this PPA pursuant to Section 4.1(C) nor (ii) elected to extend the Required Commercial Operation Date pursuant to Section 4.1(C), Buyer may elect to terminate this Agreement with immediate effect upon written notice delivered to Seller within ten (10) Days after the Required Commercial Operation Date. If Buyer fails to so terminate the Agreement, Seller shall have an additional period of up to thirty (30) Days following the Required Commercial Operation Date to achieve Commercial Operation, and if Commercial Operation is not so achieved within such thirty (30) Day period, this Agreement shall terminate automatically without any further action by any Party.

(F) The Parties sole and exclusive remedies and liability for the failure of (a) Seller to construct the Facility; (b) the Facility to achieve Commercial Operation by the Required Commercial Operation Date (as may be extended by the provisions of this Section 4.1); or (c) the Facility to achieve Commercial Operation at any specific capacity level or at least the Minimum Demonstrated Capacity shall be the right to terminate this Agreement as set forth in this Section 4.1 and the obligation of Seller to pay Daily Delay Damages to Buyer; provided, (i) such Daily Delay Damages will be capped at the Required Seller Credit Support Amount; (ii) if Seller terminates this Agreement under Section 4.1(C), Seller shall have no obligation to pay Daily Delay Damages to Buyer; (iii) if the Required Commercial Operation Date is extended more than 180 Days under Section 4.1(B) as a result of circumstances described in clause (i) of Section 4.1(B) and Seller terminates this Agreement under Section 4.1(D) or Section 4.1(E), Seller shall have no obligation to pay Daily Delay Damages to Buyer with respect to delays resulting from circumstances described in clause (i) of Section 4.1(B); and (iv) with the exception of Seller's obligation to pay any Daily Delay Damages not otherwise excluded under this Section 4.1(F), neither Seller nor Buyer shall have liability to the other after a termination of this Agreement under Section 4.1(C), Section 4.1(D) or Section 4.1(E). Each Party agrees and acknowledges that the damages that Buyer would incur due the failure of (a) Seller to construct the Facility; (b) the Facility to achieve Commercial Operation by the Required Commercial Operation Date (as may be extended by the provisions of this Section 4.1); or (c) the Facility to achieve Commercial Operation at any specific capacity level or at least the Minimum Demonstrated Capacity would be difficult or impossible to predict with certainty and that the Daily Delay Damages are a fair and reasonable calculation of such damages.

(G) If the Commercial Operation Date occurs and Buyer is entitled to Daily Delay Damages, Buyer shall invoice Seller for such owed Daily Delay Damages

after the Commercial Operation Date in accordance with the provisions of Article 9. If Seller fails to pay such invoices in accordance with Article 9, Buyer may draw upon the Seller Credit Support for any such amounts and, by written notice to Seller require Seller to, within thirty (30) Days of such notice, cause the Seller Credit Support to be replaced, amended or restored, such that the aggregate amount of the Seller Credit Support is equal to the Required Seller Credit Support Amount. If this Agreement terminates without the occurrence of the Commercial Operation Date and Buyer is entitled to Daily Delay Damages, Seller's obligation to pay such Daily Delay Damages shall survive such termination and Buyer shall invoice Seller for such owed Daily Delay Damages after the termination of this Agreement in accordance with the provisions of Article 9.

#### 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, 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 Buyer;

(C) Buyer shall have received a certificate addressed to Buyer 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 Buyer's reasonable satisfaction that it can reliably transmit real time data and measurements from solar radiation meters to Buyer.

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

4.3 Seller Election to Sell Test Energy to Buyer. Seller may, by written notice to Buyer no earlier than sixty-five (65) Days and no later than five (5) Business Days prior to the Day on which the Facility first produces Test Energy, elect to sell, subject to Section 4.5, all Apportioned Test Energy generated prior to the Commercial Operation Date to Buyer for the compensation described in Section 8.1(B). In the event Seller timely makes such election, (i) Buyer shall request and attempt to procure monthly Test Period Transmission Service at Buyer's expense within five (5) Business Days of Seller's notice of such election to Buyer and (ii) Seller shall coordinate the production and delivery of Test Energy with Buyer, including providing Buyer with prior notice of delivery as Buyer may reasonably request. Once Seller makes such election, all Test Energy generated prior to the Commercial Operation Date shall be purchased and sold as described in this Section 4.3 and Section 8.1(B). If monthly Test Period Transmission Service is not available, Buyer will coordinate with Seller and will request and attempt to purchase weekly or daily Test Period Transmission Service as specified by Seller. In the event that no monthly, weekly, or daily Test Period Transmission Service is available, (a) Buyer will not be required to purchase any other alternate transmission services, including firm transmission services, (b) Seller may pursue the sale of test energy as described in Section 4.4, and (c) the Required Commercial Operation Date shall be extended by thirty (30) Days. Seller shall be responsible for all interconnection arrangements and costs required to sell Test Energy as described in this Section 4.3.

4.4 Sale of Test Energy to Persons other than Buyer. If, as of the Day the Facility first produces Test Energy, Seller has not made the election described in Section 4.3 at least five (5) Days prior to such Day, Seller may make other arrangements for the delivery, subject to Section 4.5, of all Apportioned Test Energy generated prior to the Commercial Operation Date to Persons other than Buyer. Seller shall be responsible for all interconnection and transmission arrangements and costs required to sell Test Energy as described in this Section 4.4 or make any other disposition of Test Energy. For the avoidance of doubt, Buyer shall not be entitled to receive proceeds of sales of Test Energy pursuant to this Section 4.4.

4.5 Renewable Energy Benefits from Test Energy. Whether or not Seller makes an election as described in Section 4.3, Seller shall retain, and may sell to third parties or otherwise dispose of, any and all Renewable Energy Benefits associated with Test Energy generated before the Commercial Operation Date; provided, Seller shall retain the proceeds of, and be responsible for the costs of making, any such sale or disposition. For the avoidance of doubt, Buyer shall not be obligated or entitled to purchase Renewable Energy Benefits associated with Test Energy generated before the Commercial Operation Date.

## **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 Apportioned Solar Energy Output and Apportioned Test Energy from the Facility to Buyer at the Point of Interconnection at the required voltage. Buyer shall be responsible for all transmission

arrangements and costs or charges, if any, imposed in connection with the delivery of Apportioned 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 Buyer's open access transmission tariff or any other transmission utility, regional transmission organization, NERC, a RE or any other entity. Seller shall post and maintain any and all security for payment and performance, if, when and for so long as required under the Interconnection Agreement. Arrangements for the installation and operation of the Interconnection Provider's Interconnection Facilities shall be governed by 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 Buyer's 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) on occurrence and without intentional time delay 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 Buyer agrees that Seller shall retain all of its rights thereunder without regard to any separateness of Buyer and the Interconnection Provider. Accordingly, electric metering shall be in compliance with the Interconnection Agreement. Seller will grant Buyer access to all metering data and other meter information, including testing, on same basis as available to Seller.

5.4 Interconnection Information. Subject to FERC regulations and the FERC standards of conduct, Buyer shall be permitted to contact and obtain information concerning the Facility and Interconnection Facilities directly from the Interconnection Provider, subject to obtaining the prior written consent of Seller with respect to each such contact and request for information (which Seller shall not unreasonably withhold or delay).

## **ARTICLE 6**

### **Conditions Precedent**

6.1 Seller's Conditions 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 (or waiver by Seller) as described in Section 6.3 of each of Seller's Conditions Precedent described in this Section 6.1(A) (collectively the "Seller's Tier 1 CPs") on or before October 31, 2023:

- (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) the Buyer's Tier 1 CPs shall have been satisfied without any requirement to modify the terms of this Agreement, unless such modifications are acceptable to both Seller, in its sole discretion, and Buyer, in its sole discretion, and are mutually agreed to in a written amendment to this Agreement; and
- (iv) Seller and Identified Buyer Affiliate have entered into the Identified Buyer Affiliate PPA.

(B) Seller's obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence (or waiver by Seller) as described in Section 6.3 of Seller's Condition Precedent described in this Section 6.1(B) ("Seller's Tier 2 CP") on or before March 31, 2024:

- (i) Seller shall have received a preliminary title report with regard to the Site that does not include any third party encumbrances unacceptable to Seller (acting in its reasonable discretion).

(C) Seller's obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence (or waiver by Seller) as described in Section 6.3 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, 2024; provided, however, that if the Seller's Tier 2 CP Confirmation Notice is issued after March 31, 2024, then, without affecting any termination right of either Party with respect to a delay in Seller's Tier 2 CP 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 siting, zoning, planning commission, conditional use or other permits and other Governmental Approvals constituting Discretionary Permits and which are necessary for the construction, Testing, Commissioning, placing in service and operation of the

Facility, and such permits and Governmental Approvals have become final and non-appealable, provided that all Ministerial Permits necessary to commence construction or achieve Commercial Operation shall not be considered Seller's Tier 3 CPs, with any delays in such Ministerial Permits addressed in accordance with and subject to Article 14;

- (ii) Seller shall have executed an agreement with Ballard County with respect to payment in lieu of taxes in conjunction with the issuance of industrial revenue bonds;
- (iii) 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;
- (iv) Seller shall have received a report from Buyer's 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]; and
- (v) Seller shall have executed a LGIA that allows the Facility to interconnect at a level equal to at least the Expected Facility Capacity and provides for a construction schedule that will allow the Seller to achieve the Required Commercial Operation Date.

(D) Seller's obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence (or waiver by Seller) as described in Section 6.3 of Seller's Condition Precedent described in this Section 6.1(D) (the "Seller's Tier 4 CPs") on or before December 31, 2026:

- (i) Seller shall have met the requirements to qualify the Facility for the ITC or the PTC, each with the Energy Communities Adder and the Domestic Content Adder, and shall have delivered a certificate addressed to Buyer from a senior officer of Seller familiar with the Facility describing whether the Facility will be financed using the ITC or the PTC; and
- (ii) Financial Closing has occurred.

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

(A) Buyer's obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence (or waiver by Buyer) as described in Section 6.3 of the Buyer's Conditions Precedent described in this Section 6.2(A) (the "Buyer's Tier 1 CPs") on or before May 30, 2023:

- (i) Buyer shall have received all Commission Approvals necessary, as determined in the Buyer's sole discretion, to allow the Buyer to perform its obligations under this Agreement, without any requirement to modify this Agreement, unless such modifications are acceptable to both Seller, in its sole discretion, and Buyer, in its sole discretion, and are mutually agreed to in a written amendment to this Agreement;
- (ii) Buyer shall have designated the entire Facility as a Network Resource and secured unconditional firm network transmission service from the Point of Interconnection to Buyer's load for the Term; and
- (iii) Seller and Identified Buyer Affiliate have entered into the Identified Buyer Affiliate PPA.

### 6.3 Failure of Condition Precedent.

(A) Tier 1 CPs. The Tier 1 Seller's CPs and Tier 1 Buyer's CPs (collectively the "Tier 1 CPs") shall be deemed satisfied upon (i) delivery by Seller to Buyer 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 Buyer's CPs are based (the "Seller's Tier 1 CP Confirmation Notice"); and (ii) delivery by Buyer to Seller of a written notice stating that Buyer has achieved or waived all Tier 1 Buyer's CPs and that Buyer does not object to any conditions of the approvals on which the Tier 1 Buyer's CPs are based (the "Buyer's Tier 1 CP Confirmation Notice"). If the Seller's Tier 1 CP Confirmation Notice and/or the Buyer's Tier 1 CP Confirmation Notice are not delivered by the applicable Tier 1 CP Confirmation Notice Deadline, 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 the applicable Tier 1 CP Confirmation Notice Deadline, 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 to the applicable Tier 1 CP Confirmation Notice Deadline if it reasonably determines that such Party's Tier 1 CPs will not be achieved by the applicable Tier 1 CP Confirmation Notice Deadline.

(B) Tier 2 CPs. The Tier 2 Seller's CP shall be deemed satisfied upon delivery by Seller to Buyer of a written notice stating that Seller has achieved 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 March 31, 2024, either Party may 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 to May 30, 2024 if it reasonably determines that any Tier 2 Seller's CPs will not be achieved by May 30, 2024.

(C) Tier 3 CPs. The Tier 3 Seller's CPs shall be deemed satisfied upon delivery by Seller to Buyer 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"). Subject to any extension as described in Section 6.1(C), if the Seller's Tier 3 CP Confirmation Notice is not delivered by December 31, 2024, 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, 2024 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. Seller may provide a Tier 3 CP Termination Notice with immediate effect at any time prior to March 1, 2025 if it reasonably determines that the Seller's Tier 3 CPs will not be achieved by March 1, 2025.

(D) Tier 4 CPs. The Tier 4 Seller's CP shall be deemed satisfied upon delivery by Seller to Buyer 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 December 31, 2026, 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 to March 1, 2027 if it reasonably determines that any Tier 4 Seller's CPs will not be achieved by March 1, 2027.

(E) Upon the effectiveness of any termination as provided in this Section 6.3, this Agreement shall terminate without any liability for any Party, and Buyer shall promptly return to Seller all Seller Credit Support.

## **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 and continuing through the end of the Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all right, title and interest in and to the Apportioned Solar Energy Output (and the Apportioned Renewable Energy Benefits associated with such Solar Energy Output) that Seller makes available at the Point of Interconnection.

(B) As between Seller and Buyer, Seller shall be in control of the Solar Energy Output from the Facility up to and until delivery and receipt at the Point of Interconnection and Buyer and Identified Buyer Affiliate shall be in control of such energy from and after delivery and receipt at the Point of Interconnection. At and after the Point of Interconnection, Seller will have no control over, or responsibility for, the division of the Solar Energy Output between the Buyer and Identified Buyer Affiliate. Title and risk of loss related to the Apportioned Solar Energy Output shall transfer from Seller to Buyer at the Point of Interconnection.

(C) Ownership by Buyer of Apportioned Renewable Energy Benefits associated with Solar Energy Output purchased by Buyer as set forth in Section 7.1(A) shall be for the entire Term of this PPA, including any Apportioned 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. Buyer may, after so obtaining such Apportioned Renewable Energy Benefits from Seller, assign, to the extent permitted by Applicable Law and this PPA, such Buyer’s rights, title and interest in and to any Apportioned Renewable Energy Benefits obtained under Section 7.1(A) to one or more third parties under any transaction permitted by Applicable Law; provided that for the avoidance of doubt, any such assignment shall not relieve Buyer of its obligation to pay for Apportioned Solar Energy Output and Apportioned Renewable Energy Benefits under this PPA and shall not require Seller to take any action with respect to such third party assignment. Any financial or other compensation received by Buyer from the disposition of Renewable Energy Benefits Reporting Rights held by Buyer as set forth in Section 7.1(A) shall inure solely to the benefit of Buyer.

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

(E) Seller and Buyer agree that, as of the Effective Date, the Apportioned Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyer shall be documented and exist through Renewable Energy Certificates that are reportable and transferable on either GATS or MRETS. On or before April 1, 2025, Buyer shall notify Seller in writing whether they desire to have Seller obtain registration with either GATS or MRETS for the Apportioned Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyer. Seller shall thereafter cause the Facility to obtain and maintain registration in good standing with either GATS or MRETS (as so elected by Buyer) throughout the Term. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting requirements of GATS or MRETS relating to the Apportioned Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyer. Buyer shall, at its own cost and expense, register with, pay all fees required by, and comply with, all other requirements

of GATS or MRETS (as so elected by Buyer) in order to receive the Apportioned Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyer. During the Term, Seller shall effectuate the transfer of Apportioned Renewable Energy Benefits in the form of Renewable Energy Certificates under and in accordance with the operating rules of GATS or MRETS (as so elected by Buyer). In the event that the Buyer no longer desire to have the Apportioned Renewable Energy Benefits documented and transferred through GATS or MRETS (as so elected by Buyer) or either such elected system ceases to exist, Buyer may designate a new system of reporting and trading the Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyer. Upon such election, Seller and Buyer shall have a reasonable period of time to obtain registration on such new system, and after all Parties have so obtained registration on such system, Seller shall effectuate the transfer of Apportioned Renewable Energy Benefits to Buyer in accordance with the operating rules of such system. Buyer shall always have the right to elect to have Seller transfer Apportioned Renewable Energy Benefits through mutually agreed written instruments that document the transfer of such Apportioned Renewable Energy Benefits to Buyer as an alternative to GATS, MRETS or any other system. The Parties acknowledge and agree that the costs to Seller with respect to (a) obtaining and maintaining registration on GATS, MRETS or any other system for the reporting and trading of Apportioned Renewable Energy Benefits (including Renewable Energy Certificates), (b) creating, registering and transferring Apportioned Renewable Energy Benefits (and Renewable Energy Certificates) on any such system or otherwise, and (c) additional or different obligations needed to maintain compliance with such systems and the ability to create, register and transfer such Apportioned Renewable Energy Benefits (including Renewable Energy Certificates), to the extent such obligations result from any change in such systems or any Change in Applicable Law, shall be limited to [REDACTED] dollars (\$ [REDACTED]) per Year. If Seller incurs or pays costs in excess of such amounts, Buyer shall reimburse Seller for any such costs in excess of such [REDACTED] dollars (\$ [REDACTED]) per Year amount. Notwithstanding anything to the contrary herein, Seller shall not be obligated to (a) incur any capital expenditures or otherwise be required to alter, modify, augment or enhance the Facility in order to create, register or transfer Apportioned Renewable Energy Benefits (or Renewable Energy Certificates) as a result of any Change in Applicable Law, or (b) retire any Apportioned Renewable Energy Benefits on any tracking system or otherwise on behalf of the Buyer.

(F) Future Environmental Benefits. The Parties acknowledge and agree, as of the Effective Date, that Future Environmental Benefits may be created after the Effective Date. Buyer shall have the right to obtain such Future Environmental Benefits multiplied by the Buyer Percentage and if Buyer elect to exercise such right, Seller shall take all reasonable actions necessary to realize the full value of such Future Environmental Benefits for the benefit of Buyer, provided (i) that in so doing, Seller shall not be obligated to incur any capital expenditures or otherwise be required to alter, modify, augment or enhance the Facility; and (ii) Buyer shall reimburse Seller for any increased costs associated with such actions.

(G) Subject to Section 7.1(H), from time to time but no more than once per calendar year, Buyer may, with the concurrence of Identified Buyer Affiliate, and upon mutual agreement with Seller (not to be withheld if the terms and conditions of this Section

7.1(G) are met), amend this PPA and the Identified Buyer Affiliate PPA to change the respective Buyer Percentage hereunder and thereunder, subject to the following conditions:

- (i) the sum of the Buyer Percentage and percentage of Solar Energy Output purchased by Identified Buyer Affiliate shall be equal to one hundred percent (100 %);
- (ii) the entity (whether Buyer or Identified Buyer Affiliate) receiving a greater allocation of the Buyer Percentage than previously held: (i) is not subject to a Credit Event or an equivalent event, (ii) is not a defaulting party with respect to an ongoing Buyer Event of Default or an equivalent event, and (iii) has not been a defaulting party with respect to Buyer Event of Default or equivalent event more than once in the seven hundred thirty (730) Day period prior to the proposed effective date of such change; and
- (iii) the Buyer and Identified Buyer Affiliate have obtained any and all Governmental Approvals required for such change.

(H) For the sake of clarity, any change in Buyer Percentage made in accordance with Section 7.1(G) will in no way impact Seller's obligation with regard to the delivery of Solar Energy Output to the Point of Interconnection.

## 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 Buyer with a good faith non-binding 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 Buyer with a good faith estimate of the hourly quantities (and summed for each Month) of Solar Energy Output that Seller expects to generate in the following Year (the "Projected Schedule").

(B) If, at any time following submission of a good faith estimate as described in Section 7.2(A), Seller becomes aware of any change, not including any change in actual or forecasted weather conditions on which the estimate is based, that materially alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.3 No Sale to Third Parties. Except as provided in Section 8.2, during periods when there is Buyer Event of Default, or for the sale of Test Energy as provided in Section 4.4, all of the Apportioned Solar Energy Output and Apportioned Renewable Energy

Benefits shall be dedicated exclusively to Buyer for so long as this Agreement is in force and effect. Seller shall not (a) sell, divert, grant, transfer or assign any Apportioned Solar Energy Output, Apportioned Renewable Energy Benefits, or Capacity Rights associated with the Apportioned Solar Energy Output 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 other than the Identified Buyer Affiliate. 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, 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 product of the Buyer Percentage multiplied by the sum of:

- (i) over all hours of the Monthly Billing Period the product of: (I) the Solar Energy Payment Rate; and (II) the sum of (a) Solar Energy Output (MWh) delivered to the Point of Interconnection from the Facility during that hour plus (a) the sum of all Deemed Delivered Energy during that hour; and
- (ii) (if the certificate provided by Seller pursuant to Section 6.1(D)(i) states that Seller will utilize the PTC for financing the Facility) the result of dividing (I) the product of (a) the amount of such Deemed Delivered Energy multiplied by (b) the PTC rate applicable to the Facility as determined pursuant to Section 45(b) of the Code as in effect for such Monthly Billing Period, converted to a dollar per MWh basis; by (II) one (1) minus the highest then-applicable federal, state or local income tax rate applicable to Seller or its Affiliates or lenders providing tax equity financing for the Facility;

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, and Seller shall invoice Buyer for such Excess Solar Energy, if applicable, on the invoice sent to Buyer during the Month following the end of each Year.

(B) Test Energy Payment. In the event Seller timely makes the election described in Section 4.3, Buyer shall pay Seller for Apportioned 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 (i) the Buyer Percentage, multiplied by (b) the Test Energy Payment Rate, multiplied by (c) the amount of Test Energy (MWh) delivered during that Month.

## 8.2 Curtailed Energy.

(A) Buyer shall have the right to order Seller to curtail Solar Energy Output through Buyer Curtailment Orders, provided that Buyer shall pay Seller for the Deemed Delivered Energy associated with Buyer Curtailment Period as set forth in Section 8.1. All Buyer Curtailment Orders shall be communicated verbally to Seller's operation control center and then confirmed in writing to Seller's operational representative.

(B) If (i) Seller cannot deliver Solar Energy Output because of a Seller Delivery Excuse; or (ii) Buyer Curtailment Order, then, if permitted pursuant to Applicable Law, and for any periods during which a circumstance described in clauses (i) and (ii) is occurring, Seller may offer Solar Energy Output that the Facility generates during such periods ("Curtailed Energy") and associated Renewable Energy Benefits ("Curtailed Renewable Energy Benefits") to third-parties as may be interested and able to purchase such Curtailed Energy or Curtailed Renewable Energy Benefits. If Seller sells any Curtailed Energy or Curtailed Renewable Energy Benefits, then the amount payable by Buyer pursuant to Section 8.1(A) shall be reduced by an amount equal to the product of the Buyer Percentage multiplied by ■■■ percent (■■■%) of the net revenue received by Seller pursuant to such sale. Seller shall not be in default hereunder (and shall still be entitled to payment as described in Section 8.1) if it does not sell (or offer for sale) any Curtailed Energy or Curtailed Renewable Energy Benefits.

(C) 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 the date that is sixty (60) Days after the Commercial Operation Date, Seller shall provide Buyer with the Production Model. The Production Model shall be used for purposes of calculating Expected Amounts and any amount of Deemed Delivered Energy. Periodically throughout the Term but no more often than three times during the first four Years of the term and once in each subsequent Year during the Term, if a Party believes that the Production Model does not contain the proper variables or inputs or yields incorrect results when it is used to calculate an Expected

Amount or any amount of Deemed Delivered Energy, such Party may propose an adjustment or correction 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 and selected by Seller in its reasonable discretion.

(B) Subject to the provisions of this Section 8.3(B), Seller guarantees that starting 180 days after COD, the actual Availability of the Facility shall be at least █████ percent (██%) (the "Guaranteed Availability") measured over each Availability Day. From time to time, Buyer may, if Buyer's data indicates that three or more consecutive Availability Days constitute Availability Unsatisfactory Days and there exists no Excused Maintenance Outage or Seller Uncontrollable Minutes on such Availability Days, request that Seller provide, and Seller shall provide, a report of the Expected Amount (calculated using the Production Model) for such Availability Day or Availability Days. If Seller did not achieve the Guaranteed Availability for three or more such consecutive Availability Days, Buyer may provide Seller with written notice that the Facility did not achieve the Guaranteed Availability for such Availability Day or Availability Days (an "Availability Underperformance Notice"). If an Availability Underperformance Notice is delivered, then: (i) if an Availability Satisfactory Day occurs or has occurred during the Availability LD Cure Period established under such Availability Underperformance Notice, then (1) such Availability LD Cure Period shall end, (2) such Availability LD Cure Period shall not resume, (3) no Availability Damage Period shall commence as a result of the occurrence of such Availability Underperformance Notice, and (4) Seller shall not be in default or owe damages as a result of such Availability Underperformance Notice; or (ii) if an Availability Satisfactory Day does not occur or has not occurred during the Availability LD Cure Period established under such Availability Underperformance Notice, Seller shall, for each Availability Day occurring the end of after such 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 (such period, an "Availability Damage Period"), pay liquidated damages to equal to the Availability Damages over such Availability Damage Period. For the avoidance of doubt, the occurrence of an Availability Satisfactory Day will cure any and all Availability Unsatisfactory Days that occurred within the Availability LD Cure Period to which such Availability Satisfactory Day occurred. For the further avoidance of doubt, if an event of Force Majeure has occurred and is ongoing, and the claiming party has followed and is following all notice, mitigation and other procedural requirements associated with such event of Force Majeure as set forth in Article 14, Seller's performance obligations under this Section 8.3(B) shall be suspended for the duration of the event of Force Majeure.

(C) The "LD Monetary Factor" for an Availability Day is equal to the lesser of (i) \$████/MWh 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 sentence are the same amount, item (ii) shall be such amount. If items (i) and (ii) are equal, the LD Monetary Factor shall be \$████/MWh.

(D) In the event liquidated damages become due under Section 8.3(B) Buyer shall, no more frequently than once per Month, calculate and issue a statement to Seller for the amount due Buyer 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 Buyer 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) the required payment by Seller under this Section 8.3 shall be Buyer's sole remedy and Seller's sole liability for the matters covered by this Section 8.3; provided, that the obligations of Seller under Section 10.3 and the associated Event of Default described in Section 12.1(D) shall not be deemed to be a matter covered by this Section 8.3.

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 with respect to any such action.

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 Point of Interconnection 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 (10<sup>th</sup>) 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 Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month. Such invoice shall show information and calculations, in reasonable detail, and shall, subject to Section 12.9(B) be sent by Seller to Buyer's Agent but naming Buyer as payor. Buyer shall pay Seller such invoiced amounts on or before the later to occur of (i) the date that is sixteen (16) Business Days after the date of delivery of such invoice, and (ii) the date that is twenty-two (22) Days after 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 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. Buyer shall pay Seller such invoiced amounts within fifteen (15) Days of the date of such invoice.

(D) 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 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 Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(F) Seller shall, except as otherwise provided in this Section 9.1(F) or in Section 12.9(B), direct its invoices under this PPA to Buyer's Agent as agent but naming Buyer as payor. Seller may request written confirmation of such an arrangement from the Buyer's Agent, and may condition such invoicing arrangement on receiving such confirmation. In the event Buyer experiences a Credit Event or Buyer's Agent experiences an equivalent event, Seller may thereafter decline to direct invoices to Buyer's Agent and thereafter direct invoices to Buyer.

9.2 Miscellaneous Payments. Subject to Sections 9.5 and 9.8, 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. If a Party should dispute a portion of the charges set forth on any such invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

9.3 Currency and Method of Payment. Notwithstanding anything contained in this PPA, all payments to be made by either Seller or Buyer 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 Buyer to Seller or from Seller to Buyer 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 Seller provided Buyer 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 three hundred sixty-five (365) Days 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 three hundred sixty-five (365) Days of the date of such statement.

#### 9.7 Taxes.

(A) All Apportioned Solar Energy Output delivered by Seller to Buyer hereunder is on a wholesale basis. Buyer may use the Apportioned Solar Energy Output for its own consumption or resell it to third parties. Buyer 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 Buyer for Taxes imposed on or measured by Buyer’s overall revenues or income. Buyer shall be responsible for the payment of, and no amount payable by Seller to Buyer shall be subject to adjustment for, Taxes imposed on 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 seven hundred thirty (730) Days, 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 Buyer fails to make (directly or through Buyer's Agent) timely payment of two (2) or more monthly invoices of Seller in any twelve (12) Month period, Buyer shall provide to and maintain with Seller (following Seller's invoice for such amount) a cash security deposit from Buyer equal to two (2) times the average amount of the previous twelve (12) monthly invoices to Buyer, and Seller shall retain such security deposit until such time as 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 Buyer when due. Buyer shall replenish the cash security deposit to the amount equal to two (2) times the average amount of the previous twelve (12) monthly invoices to Buyer in the event Seller applies any portion of the deposit to any amounts not paid 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 thirty (30) Days after the earlier of the date on which construction of the Facility commences or the date upon which the full 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 Buyer 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 Buyer 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 Buyer, and 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 Buyer by providing a Testing plan at least thirty (30) Days prior to the first anticipated Test Date, updates to such Testing plan on a bi-weekly basis, or on a weekly basis if the Test Energy during Testing is schedule to change from the prior Testing plan, 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"). Seller shall be allowed to engage a third party to perform such Testing at Seller's expense. Representatives of Buyer shall have the right to be present at all such Testing. Seller shall promptly notify Buyer of any changes to the Test Date or the date of any Commissioning Tests relating to the Facility in order that Buyer may arrange for its representatives to attend.

(B) The results of Commissioning Tests, including the use of testing consistent with either standard ASTM E2848-13(2018) (Standard Test Method for Reporting Photovoltaic Non-Concentrator System Performance) or IEC 61724-2 (Photovoltaic system performance - Part 2: Capacity evaluation method), shall determine the Facility's Demonstrated Capacity. Seller may conduct multiple Commissioning Tests to determine the highest Demonstrated Capacity, and can conduct Commissioning Tests at or around the Build-Out Date, if Seller elects its option in Section 3.3(B).

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

10.3 Operation and Maintenance of the Facility. Seller shall at all times following the Commercial Operation Date 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 and the Interconnection Agreement.

10.4 Scheduled Maintenance. On or before the date that is ninety (90) Days prior to the Commercial Operation Date and, thereafter, by October 1 of each Year, Seller shall deliver to Buyer and SCC the good-faith non-binding 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, Buyer 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 Buyer and SCC. Seller shall not unreasonably refuse to change the schedule of Scheduled Maintenance Outages if requested to do so by Buyer 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 or cause scheduling conflicts with the operation and maintenance dispatch schedules established between Seller and its contractors prior to such request by Buyer.

(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.

(A) 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 Buyer 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 Buyer to the extent reasonably possible. Seller shall use Prudent Industry Practices to avoid Additional Maintenance Outages during the Non-Scheduled Maintenance Period.

(B) Notwithstanding Section 10.5(A), Additional Maintenance Outages that consist of (i) washing photovoltaic panels to improve production of the Facility; or (ii) maintenance that can be performed to resolve an issue within a period of 48 hours or less, may be performed by Seller upon written notice to Buyer, provided that such short-term maintenance described in clause (ii) may only be performed upon written notice alone up to five (5) times per year, after which such maintenance will be subject to the requirements of 10.5(A).

#### 10.6 Access to and Inspection of Facility.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility for the purposes of inspecting the Facility

consistent with Prudent Industry Practices. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Facility in any way. Buyer shall abide by Seller's generally-applied safety procedures and rules while visiting the Site.

(B) No inspections of the Facility, whether by 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 Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Facility. Any inspection of Seller's property or equipment by Buyer or any review by Buyer or consent by 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.

## **ARTICLE 11**

### **Security**

11.1 Seller Security. Within ten (10) Business Days after the satisfaction of the Tier 1 Buyer's CPs, Seller shall cause the Seller Credit Support to be provided to Buyer. The "Seller Credit Support" shall be maintained throughout the term of this Agreement and take the form of (i) a Letter of Credit or (ii) a guaranty, substantially in the form of Exhibit D, from an Affiliate of Seller with an Investment Grade Rating. The Seller Credit Support shall be an amount equal to the product of the Buyer Percentage, multiplied by \$██████ per MWac of Expected Facility Capacity (until the Commercial Operation Date, after which it shall be based on the Facility Capacity) (the "Required Seller Credit Support Amount"). Seller may change the form of Seller Credit Support from time to time so long as such credit support is reasonably acceptable to Buyer and there is no lapse in Seller Credit Support. Seller shall replenish the Seller Credit Support to the Required Seller Credit Support Amount in the event Buyer collects or draws down any portion of the Seller Credit Support after the Commercial Operation Date for any reason permitted under this Agreement (other than to satisfy a Termination Payment), until the following have occurred: (a) the Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events (or in connection with any change or replacement of the Seller Credit Support), Buyer shall promptly return to Seller the unused portion of Seller Credit Support.

11.2 Effect of Security. Nothing in this Article 11 or any security agreement 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 (except Test Energy) by Seller to a third party, or diversion by Seller for any use of Solar Energy Output committed to Buyer by Seller, other than during any Event of Default of Buyer or during any period during which 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 Buyer shall constitute an Event of Default of Seller.

(C) Seller's failure to cause, as required in Section 4.1(G), the Seller Credit Support to be replaced, amended or restored, such that the aggregate amount of the Seller Credit Support is equal to the Required Seller Credit Support Amount that is not cured within thirty (30) Days after Seller's receipt of notice of such failure from Buyer shall constitute an Event of Default of Seller.

(D) Seller's material noncompliance with Section 10.3 that is not cured within sixty (60) Days after Seller's receipt of notice of such material noncompliance from Buyer shall constitute an Event of Default of Seller; provided that such material noncompliance must, in order to constitute an Event of Default as described in this Section 12.1(D), consist of one or more acts or omissions of Seller described in Buyer's notice to Seller regarding such material noncompliance. For the avoidance of doubt, mere failure to meet Guaranteed Availability shall not constitute material noncompliance for purposes of this Section 12.1(D).

(E) 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 Buyer 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 Buyer;
- (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; or
- (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 Buyer.

(F) 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.

(G) 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 Buyer.

(A) Any of the following shall constitute an Event of Default of 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 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 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 of Seller or Buyer 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, which such notice shall be delivered on or before the date that is thirty (30) Days after the expiration of the applicable cure period, if any, upon which this PPA shall terminate (the "Early Termination Date"). Neither Buyer nor Seller 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, and if a Party fails to deliver a timely notice of termination, the right of the non-defaulting Party to

terminate with respect to the Event of Default that gave rise to the right to terminate, but not a repetition of such Event of Default, shall be deemed waived.

(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 (a “Termination Payment”). Such Termination 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, Buyer understands and agrees that Seller may not be able to sell the Apportioned Solar Energy Output on a commercially reasonable basis, and therefore Seller would not be able to mitigate its losses by selling the Apportioned Solar Energy Output to a third-party, and therefore its losses would equal the net present value (determined using a discount rate of seven percent (7%)) at the time of termination of all Apportioned Solar Energy Output that would have been produced from the date of termination of the PPA through the end of the Term (had the PPA not been terminated). If the PPA is terminated by Seller under this Section 12.4 during the period prior to the depreciation period that applies to, or that Seller (or its Affiliates) elects for, the property constituting the Facility (but in no event shorter than seven (7) years and not longer than twelve (12) years following the Commercial Operation Date), Seller’s losses will include any anticipated recapture of Tax Credits (if any) and lost depreciation. After Buyer makes a termination payment to Seller, if Seller is able to enter into new arrangements to sell the Apportioned Solar Energy Output and Apportioned Renewable Energy Benefits of the Facility within the one hundred eighty (180) Day period after the effective date of such termination, then Seller shall recalculate the termination payment based on such new arrangements for any period that overlaps with the twenty (20) year period following the Commercial Operation Date and shall reimburse Buyer in the amount of the reduced termination payment; provided, however that Seller shall be entitled to account for any direct costs associated with entering into and performing such new arrangements, but not operating costs of the Facility other than such incremental operating costs as result from such new arrangements, and reduce any reimbursement accordingly.

(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)), Buyer’s cost-to-cover losses shall be calculated using the weighted average of the Avoided Energy Cost based on the Apportioned Solar Energy Output of the Facility over the three hundred sixty-five (365) Day period prior to the effective date of termination as the replacement cost of electricity, and using the weighted average of the LD REC Input based on the Solar Energy Output of the Facility over the three hundred sixty five (365) Day period prior to the effective date of termination as the replacement cost of

Apportioned Renewable Energy Benefits. Such determination of Buyer's losses shall be based on the net present value (determined using a discount rate of seven percent (7%)) 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 the Termination Payment Damages Cap net of amounts collected from the Seller Credit Support.

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

12.9 Buyer Agent.

(A) Subject to the exceptions set forth in Section 12.9(B), by executing and delivering this Agreement, Buyer shall have irrevocably authorized and appointed Buyer's Agent to act on Buyer's behalf with respect to this Agreement and to: (i) give and receive notices and communications; (ii) execute and deliver, as Buyer's agent, all documents necessary or desirable to carry out the intent of this Agreement; (iv) make all elections contemplated by this Agreement; and (v) take all actions necessary or appropriate in the good faith judgment of Buyer for the accomplishment of the foregoing. Seller shall be entitled to deal exclusively with the Buyer's Agent on all matters relating to this Agreement and shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed by Buyer's Agent on as agent for Buyer, and on any other action taken or purported to be taken by Buyer's Agent as agent for Buyer, as being fully binding upon Buyer. Notices or communications to or from Buyer's Agent shall constitute notice to or from Buyer. Any decision or action taken or purported to be taken by Buyer's Agent as agent for Buyer hereunder, including any agreement between Buyer's Agent as Buyer's agent and Seller relating to the defense, payment or settlement of any claims for indemnification hereunder, shall constitute a decision or action of Buyer and shall be final, binding and conclusive upon Buyer, and Seller to the same extent as if made directly by Buyer. Subject to Sections 12.9(B) and 12.9(C), the provisions of this Section are independent and severable, are irrevocable and coupled with an interest and shall not be terminated by any act of Buyer, or by operation of law.

(B) Notwithstanding Section 12.9(A):

- (i) Buyer may, by thirty (30) Day's written notice to Seller, designate an Affiliate of Buyer other than Buyer's Agent, and such notice shall have the same effect with respect to such Affiliate as executing and delivering this Agreement has with respect to Buyer's Agent under Section 12.9(A); provided, Seller may reject such designation of an Affiliate if such Affiliate (i) has not been designated to serve an equivalent role under the Identified Affiliate PPA, (ii) is subject to an event that is the equivalent of Credit Event; or (iii) is the equivalent of a defaulting party with respect to an event equivalent to a Buyer Event of Default.
- (ii) While invoices from Seller shall be only sent to the Buyer's Agent as set forth in Section 9.1, Buyer may separately remit payment to Seller.

## **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 13.1.

13.2 Records. Seller and Buyer 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 Buyer 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 Buyer, 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 Buyer 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 Buyer, Seller shall provide real-time electronic access to Buyer of all solar irradiance and meteorological data collected at the Facility and corresponding unit availability data as well.

## **ARTICLE 14**

### **Force Majeure**

#### **14.1 Definition of Force Majeure Event.**

(A) “Force Majeure” shall mean a cause or event that prevents, restricts, delays or impacts either Party, in whole or in part, from performing any of its obligations under this PPA including, acts of God; epidemics that are the subject of an emergency declaration by a Governmental Authority (or other declaration by a Governmental Authority regarding such epidemic that prevents, restricts, delays or impacts the affected Party, in whole or in part, from performing any of its obligations under this PPA), pandemics declared as such by the World Health Organization or a Governmental Authority (but as applied to the COVID-19 pandemic, only with respect to impacts occurring after the Effective Date), 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, including but not limited to the failure of the main power transformer and other long-lead time equipment, so long as such failure is not caused by Seller’s acts and omissions or failure to follow Prudent Industry Practices; 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(A) 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 timely issue in accordance with Applicable Laws (i) any permit serving as the basis for a Buyer’s CP or Seller’s CP or (ii) any Ministerial Permit necessary for the commencement of construction or the achievement of Commercial Operation shall not constitute Force Majeure unless Buyer or Seller, as the case may be, timely filed for and diligently pursued the issuance of such permit.

(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 uninterrupted for a period of three hundred sixty-five Days from its inception, either Seller or Buyer 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 promptly by telephone and/or email, and in writing, within five (5) Days of actual knowledge of such occurrence, of (to the extent known) 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. Upon receipt of such notice, the non-claiming party shall diligently review a claim and promptly report back approval, rejection, or request for information or clarification. In connection with such notice and review, the claiming Party shall provide any additional, reasonably requested materials required by the non-claiming Party to validate the occurrence and impacts of such Force Majeure. A Party claiming that a Force Majeure event has occurred shall not be entitled to any relief therefor unless and until such notice is provided, but, for clarity, such relief will extend back to the date the Force Majeure event first occurred regardless of any delayed notice, except to the extent Seller's delay in providing such notice to Buyer beyond five (5) Days prejudices Buyer or causes Buyer an adverse effect. 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 of its actual knowledge thereof.

14.4 Duty to Mitigate. The Party claiming that a Force Majeure event has occurred shall exercise commercially reasonable 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 Buyer 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 Buyer 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 a mandatory prepayment thereunder and the cost of Restoration of the Facility following a Force Majeure, net of insurance proceeds, does not exceed [REDACTED] percent ([REDACTED]%) of the original cost of the Facility, 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 a mandatory prepayment thereunder and the cost of Restoration of the Facility following a Force Majeure, net of insurance proceeds, exceeds [REDACTED] percent ([REDACTED]%) of the original cost of the Facility then Seller shall have the right to terminate this PPA without further liability to Buyer.

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 one hundred eighty (180) Days after the date that it becomes obligated to



proceed with such Restoration, then either Seller or Buyer 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 Buyer within sixty (60) Days after provision of such notice was required. Buyer 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 Buyer, 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 Buyer 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 and Warranties. Seller hereby represents and warrants to Buyer as follows as of the Effective 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 Buyer 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 or the Financing Documents) 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 Buyer, except as such enforceability may be limited by (i) public policy or (ii) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights.

(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 that are not yet necessary or required to be obtained or that are identified as Seller's Conditions Precedent, 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 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.

15.2 Buyer's Representations, Warranties, and Covenants. Buyer hereby represents and warrants to Seller as follows as of the Effective 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. 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, except as such enforceability may be limited by (i) public policy or (ii) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights.

(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 significant earth-moving or civil work on the Facility at the Facility site, and thereafter, on or before June 1 of each Year during the Term, provide Buyer with one (1) copy of insurance certificates reasonably acceptable to Buyer 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 Buyer 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 Buyer, in its reasonable discretion, deem acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). 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 Buyer and its 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 Buyer 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 Buyer, its Affiliates, and their respective officers, directors, and employees as additional insureds only to the extent Buyer (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) Buyer and Seller shall each be responsible for its own facilities. Buyer and Seller shall each be responsible for ensuring adequate safeguards for Buyer, Buyer's customers, and personnel and equipment belonging to Buyer, 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 Buyer, its 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) The Buyer 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 either Buyer of its covenants, representations, and warranties or obligations hereunder; or
- (ii) the negligence or willful misconduct of either 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 (the "Indemnifying Party") 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. Each Party shall materially comply with all Applicable Laws in effect or that may be enacted during the Term, the violation of which could have a material adverse effect on the ability of such to perform its obligations under this PPA. As of the Commercial Operation Date, Seller shall have timely submitted its “exempt wholesale generator” certification as such term is defined in the regulations of the Federal Energy Regulatory Commission.

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 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 Buyer's Consent. 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 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 Buyer 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 Buyer’s 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 Buyer shall be permitted to make any necessary disclosures of Confidential Information in connection therewith (including any ongoing requirements), provided that Buyer 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 Buyer shall each be entitled to disclose Confidential Information as permitted under Applicable Law. In such event, Seller and/or Buyer 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 and Financing Parties (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.

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IN WITNESS WHEREOF, the Parties have executed this PPA.

Seller:

**Song Sparrow Solar LLC**

By: 

Name: Craig Cornelius \_\_\_\_\_

Title: President \_\_\_\_\_

Date: \_\_\_\_\_

Buyer:

**Louisville Gas and Electric Company**

By: 

Name: David S. Sinclair

Title: VP – Energy Supply & Analysis

Date: 2-24-2023



**EXHIBIT A**

**NOTICE ADDRESSES**

**To Seller:**

All Notices:

Song Sparrow Solar LLC  
4900 N. Scottsdale Rd  
Scottsdale, AZ 85251  
Att: Asset Management  
Email: [REDACTED]

With a copy to:

Clearway Energy Group  
5780 Fleet Street, Suite 130  
Carlsbad, CA 92008  
Attn: General Counsel

All Invoices:

Attn: Accounts Payable  
[REDACTED]

Scheduling:

Attn: Clearway Energy RPMC  
Phone: [REDACTED]  
Email: [REDACTED]

Payments:

Attn: Asset Management  
Email: [REDACTED]

**To Buyer/Buyer's Agent (through the following):**

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 Counsel  
James J. Dimas

PPL Services Corporation  
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, property damage liability, contractual, products liability and completed operations. 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 replacement value subject to sublimits prudent to industry practice. 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

### PRODUCTION MODEL VARIABLES AND METHODOLOGY

The “Production Model” shall be the energy production model prepared by Seller (and reasonably agreed to by Buyer or confirmed as reasonable by an independent engineer), and as may be updated from time to time, in each case pursuant to Section 8.3(A), which model shall include as matters that can either be fixed or variable inputs (and such other fixed or variable inputs as are reasonable to accurately reflect the Expected Amount or an amount of Deemed Delivered Energy):

- A. The parameters of the Facility on an as-built basis;
- B. The solar module manufacturer PAN file;
- C. The inverter manufacturer OND file;
- D. Meteorological station data:
  - a. global horizontal irradiance;
  - b. plane of array irradiance;
  - c. albedo irradiance;
  - d. weather conditions; and
  - e. wind speed.
- E. Annual solar panel degradation.

The methodology for running the Production Model shall be established by the Seller (and confirmed by the independent engineer selected by Seller, and approved by Buyer in writing), using the engineer’s standard methodology to calculate the Expected Amount or an amount of Deemed Delivered Energy; provided that when using the Production Model to calculate an Expected Amount or an amount of Deemed Delivered Energy, actual weather conditions at the Site measured by the on-site measurement equipment based on the average of the readings from all installed measurement stations) shall be used for such calculation such that the Expected Amount or an amount of Deemed Delivered Energy is calculated on a weather-adjusted basis; provided that the Expected Amount and Deemed Delivered Energy shall only be measured over the period of time that solar irradiance is of an amount that permits the Facility to generate Solar Energy.

## EXHIBIT D

### Form of GUARANTY AGREEMENT

This Guaranty Agreement (“Guaranty”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_, a \_\_\_\_\_ corporation (“Guarantor”), in favor of **LOUISVILLE GAS AND ELECTRIC COMPANY**, a Kentucky corporation (the “Beneficiary”).

#### RECITALS:

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

G. Beneficiary and Counterparty are parties to that certain Power Purchase Agreement dated as of February [\_\_\_], 2023 (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 and payable or which may hereafter become due and payable 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 ten (10) 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  
220 West Main Street, 7<sup>th</sup> 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: \_\_\_\_\_

**FIRST AMENDMENT TO  
POWER PURCHASE AGREEMENT**

This **FIRST AMENDMENT TO POWER PURCHASE AGREEMENT** (this "Amendment") is entered into as of ~~June 23~~ 2023 (the "Effective Date"), by and between Louisville Gas and Electric Company, a Kentucky corporation ("Buyer") and Song Sparrow Solar LLC, a Delaware limited liability company ("Seller"), each individually a "Party" and collectively, the "Parties".

**RECITALS**

**WHEREAS**, the Parties entered into that certain Power Purchase Agreement, dated February 24, 2023 (the "Agreement");

**WHEREAS**, the Parties desire to amend the Agreement as set forth herein; and

**WHEREAS**, the Parties are entering into this Amendment in accordance with Section 20.7 of the Agreement to implement such amendments.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Amendments to the Agreement.**

a. The definition of "Tier 1 CP Confirmation Notice Deadline," defined in Section 1.4 of the Agreement, is hereby amended by replacing "May 30, 2023" with "November 27, 2023" and by replacing "October 31, 2023" with "February 29, 2024."

b. Section 6.1(A) of the Agreement is hereby amended by replacing "October 31, 2023" with "February 29, 2024."

c. Section 6.1(B) of the Agreement is hereby amended by replacing "March 31, 2024" with "July 31, 2024."

d. Section 6.1(C) of the Agreement is hereby amended by replacing "December 31, 2024" with "April 30, 2025" and by replacing "March 31, 2024" with "July 31, 2024."

e. Section 6.2(A) of the Agreement is hereby amended by replacing "May 30, 2023" with "November 27, 2023."

f. Section 6.3(B) of the Agreement is hereby amended by replacing "March 31, 2024" with "July 31, 2024" and by replacing both references to "May 30, 2024" with "September 29, 2024."

g. Section 6.3(C) of the Agreement is hereby amended by replacing both references to "December 31, 2024" with "April 30, 2025" and by replacing both references to "March 1, 2025" with "June 29, 2025."

**2. General.**

a. Definitions; Interpretation. All capitalized terms used in this Amendment (including the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Agreement.

b. Agreement Otherwise Not Affected. Except for the amendments pursuant hereto, the Agreement remains unchanged and in full force and effect and is hereby ratified and confirmed in all respects. The execution and delivery of, or acceptance of, this Amendment and any other documents and instruments in connection herewith by either Party shall not be deemed to create a course of dealing or otherwise create any express or implied duty by it to provide any other or further amendments, consents, or waivers in the future.

c. Entire Agreement. This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication or prior writings related thereto.

d. Binding Effect. This Amendment shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns.

e. No Reliance. Each Party hereby acknowledges and confirms that it is executing this Amendment on the basis of its own investigation and for its own reasons without reliance upon any agreement, representation, understanding or communication by or with the other Party or its agents, representatives or attorneys not set forth within the Agreement or this Amendment.

f. Costs and Expenses. Each Party shall be responsible for any costs and expenses incurred by such Party in connection with the negotiation, preparation, execution and delivery of this Amendment and any other documents to be delivered in connection herewith.

g. Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY, CONSTRUED, AND ENFORCED UNDER THE LAWS OF THE COMMONWEALTH OF KENTUCKY WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER STATE.

h. Amendments. This Amendment may not be modified, amended or otherwise altered except by written instrument executed by the Parties' duly authorized representatives.

i. Interpretation. This Amendment is the result of negotiations between and has been reviewed by counsel to each of the Parties and is the product of all Parties hereto. Accordingly, this Amendment shall not be construed against either Party merely because of such Party's involvement in the preparation hereof.

j. Counterparts. This Amendment may be executed and delivered in counterparts, all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Amendment by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

*[Signatures appear on the following page.]*



IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed as of the Effective Date.

**SONG SPARROW SOLAR LLC, a Delaware  
limited liability company**

**LOUISVILLE GAS AND ELECTRIC, a  
Kentucky corporation**

COMPANY

Sign: Valerie Wooley

Print: Valerie Wooley

Title: Vice President

Sign: David S. Sinclair

Print: David S. Sinclair

Title: VP Energy Supply & Analysis

JO

Case No. 2023-00256  
Song Sparrow Solar LLC  
Responses to Siting Board's Post-Hearing Request for Information

**POST-HEARING DR 4:**

Provide all studies that have been completed as referenced in hearing testimony, including but not limited to, the eagle nest survey, and the desktop survey for historical or cultural significance.

**Response:** Song Sparrow Solar is contemporaneously filing the following studies referenced in hearing testimony, including but not limited to the eagle nest survey, which is provided in the Threatened and Endangered Species Habitat Assessment Report, and the desktop survey for historical or cultural significance as an exhibit below:

1. Wetland and Waterbody Delineation Report
2. Threatened and Endangered Species Habitat Assessment Report
3. Kentucky Office of State Archaeology Preliminary Records Review
4. Kentucky Heritage Council Historic Resources Records Review
5. Phase I Environmental Site Assessment

**Witness:** Nick Benjamin

Case No. 2023-00256  
Song Sparrow Solar LLC  
Responses to Siting Board's Post-Hearing Request for Information

**POST-HEARING DR 5:**

Provide the executed Industrial Revenue Bond (IRB) and PILOT agreement in reference to the proposed project. If not executed, provide the proposed agreement.

**Response:** The executed Industrial Revenue Bond (IRB) and PILOT agreement in reference to the Project are included as an exhibit below.

**Witness:** Nick Benjamin

Stoumbe / Whip 0

RESOLUTION NO. 2023-12-05-001

**A RESOLUTION OF THE FISCAL COURT OF THE COUNTY OF BALLARD, KENTUCKY, PRELIMINARILY APPROVING AN INDUSTRIAL REVENUE BOND FINANCING FOR SONG SPARROW SOLAR LLC; AUTHORIZING INITIATION OF THE ACQUISITION, CONSTRUCTION, EQUIPPING, AND INSTALLATION OF AN INDUSTRIAL PROJECT; AGREEING TO ISSUE ONE OR MORE SERIES OF INDUSTRIAL REVENUE BONDS AT THE APPROPRIATE TIME; AUTHORIZING THE EXECUTION AND DELIVERY OF A MEMORANDUM OF AGREEMENT AND A PAYMENT IN LIEU OF TAXES AGREEMENT IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AND TAKING OTHER PRELIMINARY ACTIONS**

**WHEREAS**, Sections 103.200 through 103.285, inclusive, of the Kentucky Revised Statutes (“*KRS*”), as amended (the “*Industrial Revenue Bond Act*”), permit political subdivisions (i) to issue industrial revenue bonds, (ii) to lend the proceeds of the bonds to a corporation or company to finance the costs of industrial projects, (iii) to take title to such industrial projects, and (iv) to lease the industrial projects to the corporation or company while the bonds are outstanding, and, by taking title to such industrial projects, exempt the industrial projects financed thereby from certain state and local ad valorem taxes while the bonds are outstanding; and

**WHEREAS**, KRS 65.940 through 65.956, inclusive (the “*Government Leasing Act*” and, together with the Industrial Revenue Bond Act, collectively the “*Acts*”), permit political subdivisions to enter into lease agreements in order to provide for the use of property for public purposes, and, by leasing and subleasing such property, exempt the property from state and local ad valorem taxes during the lease term; and

**WHEREAS**, under the Acts, the financing of industrial projects constitutes a valid public purpose; and

**WHEREAS**, the Fiscal Court of the County of Ballard, Kentucky (the “*Issuer*”), has determined that the Issuer may assist Song Sparrow Solar LLC, a Kentucky limited liability company (the “*Company*”), by pursuing the acquisition, construction, equipping, and installation of an industrial project of the Company consisting of the facilities and properties, including land, leasehold interests in land, buildings, fixtures, equipment and personal property, including any franchise as that term is used in KRS 136.115 through 136.180, inclusive (the “*Franchise*”), described in EXHIBIT A attached hereto (collectively, the “*Project*”) and by entering into, at the appropriate time, a lease agreement with the Company (the “*Lease Agreement*”), pertaining to the Project, all pursuant to and in furtherance of the purposes of the Act and the ensuing public benefit to the residents of the Issuer and its environs, the Lease Agreement to be upon terms and conditions as the Act may require and as the Issuer may deem acceptable; and

**WHEREAS**, the Company has represented to the Issuer that the acquisition, construction, equipping, and installation of the Project, if acquired, constructed, equipped, and installed, will result in new job and other economic development opportunities within the environs of the Issuer; and

**WHEREAS**, the Issuer is authorized by the Acts to issue its industrial revenue bonds and enter into a lease for the public purpose of defraying the costs of acquiring, constructing, equipping, and installing “industrial building” facilities, which term means all real and personal properties suitable for the Project, including land, buildings, fixtures, equipment and the Franchise; discussions have occurred between representatives of the Company and the Issuer regarding the issuance of industrial revenue bonds by the Issuer to finance the Project; it is the intention of the Issuer, and the Issuer has agreed and hereby agrees with the Company, to issue such industrial revenue bonds upon compliance by the Company with such

reasonable conditions and obligations as the Issuer may require and documents incident to such bond issue or issues and upon the agreement of the Company to pay the reasonable costs and expenses of the Issuer related to or arising from such issuances from bond proceeds or other sources; and the Issuer has authorized the Company to proceed with the initiation of the acquisition, construction, equipping, and installation of the Project, subject to reimbursement of the costs of such acquisition, construction, equipping, and installation from the proceeds of the industrial revenue bonds, as and when issued; and

**WHEREAS**, based upon the Company's present estimate of the aggregate costs of the Project together with a reasonable allowance for contingencies and incidental costs, the Issuer proposes to issue its industrial revenue bonds in an aggregate stated principal amount up to \$175,000,000 (the "**Bonds**"), the Bonds to have a term of up to forty years, to pay the aggregate costs of the acquisition, construction, equipping, and installation of the Project, including costs incident to the authorization, sale, and issuance of the Bonds and other financing costs, with the understanding that such maximum aggregate amount may be increased by subsequent official action of the Issuer upon the Company's request; and the Bonds will be payable solely from payments to be made by the Company under the Lease Agreement and will not be payable from any funds or assets of the Issuer whatsoever; and

**WHEREAS**, the Issuer proposes to enter into, at the appropriate time, the Lease Agreement with the Company under which the Company will covenant and agree to pay amounts sufficient to provide for the payment of principal of and premium, if any, and interest on the Bonds together with all trustee, paying agent, and servicing agent's fees in connection the Bonds, all ground rent due with respect to any land leased, and any other related charges as the same come due and payable; and

**WHEREAS**, to evidence the Issuer and the Company's preliminary agreement regarding these matters the parties propose to enter into a Memorandum of Agreement substantially in the form set out in **EXHIBIT B** attached hereto (the "**Memorandum of Agreement**"), and to enter into a Payment in Lieu of Taxes Agreement substantially in the form set out in **EXHIBIT C** attached hereto (the "**PILOT Agreement**").

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE FISCAL COURT OF THE COUNTY OF BALLARD, KENTUCKY, AS FOLLOWS:**

**Section 1.** It is hereby found, determined, and declared that the recitals set forth above are hereby incorporated in this Section 1 by reference.

**Section 2.** It is found, determined, and declared that (a) the recitals set forth in the preambles to this Resolution, which are incorporated in Section 1 by reference, are true and correct; (b) the amount of money necessary to be provided by the Issuer through the issuance of the Bonds for the acquisition, construction, installation, and equipping of the Project, including the Franchise, will be an aggregate amount up to \$175,000,000, to finance the Project and have a term of up to forty years; (c) the Company has represented it intends to have sufficient financial resources to acquire, construct, install, and equip the Project and to place it in operation and to continue to operate, maintain, and insure the Project throughout the term of the Bonds, meeting when due the obligations of the Lease Agreement; and (d) sufficient safeguards shall be provided by the Lease Agreement to insure that all money provided by the Issuer from the proceeds of the Bonds will be expended, by way of direct expenditure or reimbursement, solely and only for the purposes of the Project financed thereby.

**Section 3.** It is hereby found, determined, and declared that (a) the costs of acquiring, constructing, installing, and equipping the Project, including land, leasehold interests in land, buildings, fixtures, equipment and personal property, including any Franchise, will be paid out of the proceeds of the Bonds, such proceeds to be supplemented by contributions of the Company as may be necessary to complete the Project financed by the Lease Agreement; (b) none of the Bonds will be general obligations of the Issuer

or constitute a pledge of the full faith and credit or taxing power of the Issuer; (c) neither the Bonds nor the interest thereon shall constitute or give rise to any pecuniary liability whatsoever of the Issuer or any charge against its general credit or taxing power; (d) the Bonds and the payment of interest thereon shall be secured and payable solely by a pledge of amounts to be paid by the Company or otherwise to be available under the Lease Agreement; (e) no part of said costs will be payable out of any general funds, assets, properties, or other contributions of the Issuer; (f) the Issuer shall sell the Bonds only to the Company or any affiliated entity or assignee thereof; and (g) the Company shall pay all the reasonable costs and expenses of the Issuer related to the issuance of the Bonds in an amount not to exceed \$1,500.

**Section 4.** The acquisition, construction, equipping, and installation of the Project may be initiated and undertaken or caused to be initiated and undertaken by the Company forthwith, and the Company is authorized to formulate and develop plans and specifications for the Project and to enter into such contracts and undertakings as may be required for the acquisition, construction, equipping, and installation of the Project. Payments or reimbursements to or on behalf of the Company after the receipt of the proceeds of the sale of the Bonds by the Issuer shall be made as set out in the Lease Agreement.

**Section 5.** The Project involves the manufacture of electricity, a commercial product, and constitutes an "industrial building" as provided in KRS 103.200(1)(a).

**Section 6.** The Company has requested, and the Issuer hereby approves, the employment of Stoll Keenon Ogden PLLC as "Bond Counsel." Bond Counsel is authorized and directed to take any other legal action necessary or appropriate in connection with the issuance of the Bonds.

**Section 7.** The Company is authorized and directed to take any other legal action necessary and customary in order to satisfy any prerequisites to the issuance of the Bonds. The Counsel for the Issuer and its officers and officials are authorized and requested to assist the Company and Bond Counsel in any appropriate manner.

**Section 8.** The Memorandum of Agreement attached hereto as **EXHIBIT B** is hereby approved and the Judge/Executive is hereby authorized to execute the Memorandum of Agreement on the Issuer's behalf.

**Section 9.** It is hereby acknowledged and agreed that the PILOT Agreement attached hereto as **EXHIBIT C** describes the agreement reached between the Issuer and the Company's representatives regarding the Company's obligations to make payments in lieu of taxes while the Bonds are outstanding, the PILOT Agreement is hereby approved, and the Judge/Executive is hereby authorized to execute the PILOT Agreement on the Issuer's behalf. The Company may assign in part or in full its rights hereunder by assigning the Memorandum of Agreement and Payment in Lieu of Taxes Agreement and providing notice of such assignment to the Judge/Executive.

**Section 10.** No funds of the Issuer shall be expended for the costs of issuance of the Bonds or for the costs of the Project, except such as are derived from Bond proceeds.

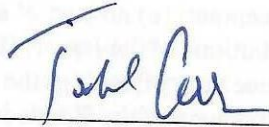
**Section 11.** All resolutions, municipal orders, and other official actions of the Issuer or parts thereof in conflict herewith are, to the extent of such conflict, hereby rescinded.

**Section 12.** This Resolution shall be in full force and effect from and after its adoption. The Issuer may repeal this Resolution, terminate its preliminary authorization for the issuance of the Bonds and terminate the attached Memorandum of Agreement and PILOT Agreement should the Company fail to begin construction of the Project within five years from the date of adoption hereof.

*[Signature Page To Follow]*

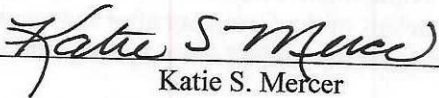
**SIGNATURE PAGE TO INDUCEMENT RESOLUTION**

12/05/23 ADOPTED by the Fiscal Court of the County of Ballard, Kentucky, at a meeting held on 12/05/23, 2023.



Todd Cooper  
County Judge/Executive

Attest:

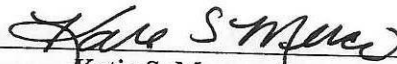


Katie S. Mercer  
County Clerk

**CERTIFICATION**

I, the undersigned, do hereby certify that I am the duly qualified and acting County Clerk of Ballard County, Kentucky (the "Issuer"), and as such I further certify that the foregoing (with the attached EXHIBITS A, B, and C), is a true, correct, and complete copy of a Resolution duly adopted by the Fiscal Court of the Issuer at a meeting properly held on 12/05, 2023, signed by the County Judge/Executive and now in full force and effect, all as appears from the official records of the Issuer in my possession and under my control.

IN WITNESS WHEREOF, I have hereunder set my hand this 12/05, 2023.



Katie S. Mercer  
County Clerk

**EXHIBIT A  
TO INDUCEMENT RESOLUTION**

**Project Description**

The Project includes all industrial building facilities to be financed by the Bonds and to be acquired, constructed, installed, and equipped by the Company on 1,000 acres of land, more or less, located in Ballard County, Kentucky, for the purpose of manufacturing up to 104 megawatts, alternating current (MW<sub>AC</sub>), of electricity, including but not limited to land, leasehold interests in land, buildings, fixtures, equipment and personal property, including any Franchise, and all related distribution facilities and operating equipment and machinery deemed necessary in connection therewith.



**EXHIBIT B  
TO INDUCEMENT RESOLUTION**

**Form of Memorandum of Agreement**

**MEMORANDUM OF AGREEMENT**

This **MEMORANDUM OF AGREEMENT** is made as of 12/5/2023, 2023 (the "*Effective Date*"), by and between (i) the **COUNTY OF BALLARD, KENTUCKY**, a county and political subdivision of the Commonwealth of Kentucky (the "*Issuer*"); and (ii) **SONG SPARROW SOLAR LLC**, a Kentucky limited liability company (the "*Company*").

**RECITALS**

**A.** The Issuer is authorized under Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes (the "*Industrial Revenue Bond Act*") to issue industrial revenue bonds to finance the costs of acquiring, constructing, installing, and equipping certain industrial projects and facilities within the meaning of the Act, in order to accomplish the public purposes of promoting economic development within the Issuer's environs; and

**B.** The Issuer is authorized under Sections 65.940 to 65.956, inclusive, of the Kentucky Revised Statutes, as amended (the "*Government Leasing Act*" and, together with the Industrial Revenue Bond Act, collectively the "*Acts*"), to enter into lease agreements in order to provide for the use of property for public purposes; and

**C.** The Company has advised the Issuer that the Company desires to finance the acquisition, construction, equipping, and installation of an industrial project consisting of the facilities and properties, including land, leasehold interests in land, buildings, fixtures, equipment and personal property, including any franchise as that term is used in Sections 136.115 to 136.180 of the Kentucky Revised Statutes (the "*Franchise*"), described in **ATTACHMENT A** attached hereto (collectively, the "*Project*"); and

**D.** The Company has asked the Issuer to issue one or more series of industrial revenue bonds pursuant to the Act in a combined aggregate principal amount not to exceed \$175,000,000 (the "*Bonds*") for the purpose of financing the Project; and

**E.** The parties hereto have found and determined that the financing of the Project will tend to accomplish the public purposes of the Act by causing economic development within the Issuer's environs; and

**F.** The Issuer proposes to issue the Bonds to finance the Project and desires to authorize the Company to proceed with the financing of the Project and be reimbursed from the proceeds of the Bonds for costs incurred related thereto before the issuance of the Bonds; and

**G.** The Issuer proposes to enter into, at the appropriate time and in accordance with the Act, one or more lease agreements with the Company (each, a "*Lease Agreement*"), pertaining to the Project, such Lease Agreement to be upon terms and conditions as the Act may require and the Issuer may deem acceptable; and

**H.** In order to obtain for the Issuer's residents the benefits listed above, which the Project would create and preserve, the Issuer desires to encourage and induce the Company to proceed with the financing of the Project.

**NOW, THEREFORE,** in consideration of the premises and of the covenants and undertakings herein expressed, the Issuer and the Company hereby agree as follows:

**Section 1.** It is hereby found, determined, and declared that the recitals set forth in the preambles to this Agreement are true and correct and hereby incorporated in this Section 1 by reference.

**Section 2.** The Company may commence the acquisition, construction, equipping, and installation of the Project and may provide or cause to be provided, at its own expense, any necessary interim financing to permit such acquisition, construction, equipping, and installation to commence and continue.

**Section 3.** The Issuer will issue and sell the Bonds pursuant to the terms of the Act, in an aggregate principal amount not to exceed \$175,000,000, the Bonds to have a term of up to forty years and to be issued upon completion of the acquisition, construction, equipping, and installation of the phase or phases of the Project to be financed by such series. The Bonds shall be signed by the manual or facsimile signature of the Issuer's Judge/Executive and attested to by the Issuer's County Clerk, and shall bear such title or designation, shall bear interest at such rate or rates, shall be in such denomination or denominations, shall be subject to such terms of redemption, shall be in registered form, shall be payable as to principal, redemption price, and interest at such place or places, and shall contain such other terms and conditions as may be fixed by or pursuant to the Issuer's ordinance or resolution authorizing the sale and delivery thereof. The proceeds from the sale of the Bonds shall be used to finance the Project pursuant to the Act.

**Section 4.** The Issuer will execute and deliver the Lease Agreement or assignments of ground lease, as the case may be, with respect to assets to be leased for the Project pursuant to the terms of the Act.

**Section 5.** The Issuer will cooperate with the Company for the purpose of issuing and selling the Bonds on the best terms reasonably obtainable; and if arrangements therefor satisfactory to the Issuer and the Company can be made, the Issuer will adopt such resolutions and proceedings and authorize the execution and delivery of such instruments and the taking of such further actions as may be necessary or advisable for the authorization, issuance, and sale of the Bonds on a negotiated basis and the use of the proceeds thereof to finance the Project, all as shall be authorized by law and mutually satisfactory to the Issuer and the Company. The Issuer shall sell the Bonds only to the Company or any affiliated entity or assignee thereof.

**Section 6.** Upon the issuance of the Bonds, the Issuer shall take title to the Project financed thereby by bill of sale, deed or assignment of ground lease, as the case may be, and the Issuer and the Company shall enter into a Lease Agreement pursuant to which the Company will covenant and agree to pay amounts sufficient to provide for the payment of principal of and interest for the Bonds, together with all trustee, paying agent, and serving agent's fees in connection with the Bonds, any and all ground rent due with respect to any land leased by the Issuer for the Project and any other related charges as the same come due and payable.

**Section 7.** The Issuer will take or cause to be taken such other acts and adopt or cause to be adopted such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate pursuant thereto.

**Section 8.** Contemporaneously with the sale of each series of Bonds, the Company (a) will enter into a Lease Agreement with the Issuer, the terms of which shall obligate the Company to pay the

Issuer the amounts described in Section 6 hereof, as and when the same shall become due and payable, all provisions required by law and such other provisions as shall be mutually acceptable to the Issuer and the Company, and (b) will take such further acts and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

**Section 9.** As an inducement to the Issuer to enter into this Memorandum of Agreement, the Company agrees that it will reimburse the Issuer for, or pay reasonable expenses, including fees and expenses of its counsel, which the Issuer may incur at the Company's request, or as may be necessary, arising from the execution of the Memorandum of Agreement and the performance by the Issuer of its obligations hereunder, but such expenses shall not exceed \$1,500 for the Bonds, which the Issuer and the Company agree is reasonably sufficient to pay such costs and expenses.

**Section 10.** It is understood and agreed by and between the Issuer and the Company that the provisions hereof are not intended to, and shall not be construed or interpreted to (a) obligate or authorize the expenditure of any funds of the Issuer derived from any source whatsoever other than the proceeds from the issuance and sale of the Bonds as provided for herein; (b) create a general obligation of the Issuer; (c) constitute a pledge of the full faith and credit or taxing power of the Issuer; or (d) create any personal liability of the Issuer's present or future officers, officials, members, and employees, serving from time to time.

**Section 11.** It is further understood by the Issuer and the Company that the Issuer's (a) issuance of the Bonds, (b) lending the proceeds of the Bonds to the Company to finance the costs of the Project (including the Franchise and leasehold interests in any ground leases), (c) taking title to the Project (including the Franchise and the leasehold interests in any land for the Project), and (d) leasing of the Project (including the land and the Franchise) to the Company while the Bonds are outstanding, will exempt the Project financed thereby (including the Franchise) and the underlying land from certain state and local ad valorem taxes while the Bonds are outstanding.

**Section 12.** No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or rent under any ground lease agreement or for any claim based thereon or upon any obligation, covenant, or agreement therein contained against the Issuer, any past, present, or future officer, member, employee, or agent of the Issuer or the Commonwealth of Kentucky or any agency or political subdivision thereof, as such, either directly or through the Issuer or the Commonwealth of Kentucky or any agency or political subdivision thereof, under any rule of law or equity, statute, or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officer, member, employee, or agent as such shall be expressly waived and released as a condition of and consideration for the execution and delivery of this Memorandum of Agreement, the issuance of the Bonds and the leasing of any assets for the Project.

**Section 13.** The Company may assign its rights under this Memorandum of Agreement and shall provide notice of such assignment to the Judge/Executive of the Issuer. Any such assignment of rights shall be subject to the assignee's obligation to assume the Company's obligations under the Payment in Lieu of Taxes Agreement. This Memorandum of Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company, and their respective successors and assigns. The Issuer and the Company agree that this Agreement is not intended to create any third-party beneficiaries, and that no provision of this Agreement is intended to benefit any person or entity other than the signatories hereto. The provisions of this Agreement may be enforced solely by the Issuer, the Company, and their respective successors and assigns and shall not be enforceable by any other person or entity.

**Section 14.** The Issuer may terminate this Memorandum of Agreement should the Company fail to begin construction of the Project within five years from the date hereof.

**Section 15.** This Agreement may be signed by each party upon a separate copy or separate signature page, and any combination of separate copies signed by all parties or including signature pages so signed will constitute a single counterpart of this Agreement. This Agreement may be signed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same agreement. It will not be necessary, in proving this Agreement in any proceeding, to produce or account for more than one counterpart of this Agreement. This Agreement will become effective when one or more counterparts have been signed by each party, and delivered to the other parties, respectively. Any party may deliver an executed copy of this Agreement (and an executed copy of any documents contemplated by this Agreement) by facsimile transmission to another party or e-mailed .pdf files of scanned copies bearing their respective signatures, and such delivery will have the same force and effect as any other delivery of a manually signed copy of this Agreement (or such other document).

*[Signature Page To Follow]*

**SIGNATURE PAGE TO MEMORANDUM OF AGREEMENT**

**IN WITNESS WHEREOF**, the County and the Company have caused this Memorandum of Agreement to be executed in their respective names all as of the Effective Date.

**COUNTY OF BALLARD, KENTUCKY**

By: Todd Cooper  
Todd Cooper  
County Judge/Executive

Attest:

By: Katie S. Mercer  
Katie S. Mercer  
County Clerk

**SONG SPARROW SOLAR LLC,**  
a Kentucky limited liability company

By: John Woody  
Name: John Woody  
Its: Vice President

**ATTACHMENT A  
TO MEMORANDUM OF AGREEMENT**

**Project Description**

The Project includes all industrial building facilities to be financed by the Bonds and to be acquired, constructed, installed, and equipped by the Company on 1,000 acres of land, more or less, located in Ballard County, Kentucky, for the purpose of manufacturing up to 104 megawatts, alternating current (MW<sub>AC</sub>), of electricity, including but not limited to land, leasehold interests in land, buildings, fixtures, equipment and personal property, including any Franchise, and all related distribution facilities and operating equipment and machinery deemed necessary in connection therewith.

**EXHIBIT C  
TO INDUCEMENT RESOLUTION**

**Form of Payment In Lieu of Taxes Agreement**

**PAYMENT IN LIEU OF TAXES AGREEMENT**

12/05/2023

This **PAYMENT IN LIEU OF TAXES AGREEMENT** (this "*Agreement*") is made as of [ ] (the "*Effective Date*"), by and between (i) the **COUNTY OF BALLARD, KENTUCKY**, a county and political subdivision of the Commonwealth of Kentucky (the "*Issuer*"); and (ii) **SONG SPARROW SOLAR LLC**, a Kentucky limited liability company (the "*Company*").

**RECITALS**

**A.** The Company or an affiliate thereof currently is acquiring, constructing, installing, and equipping an industrial project in one or more phases consisting of the facilities and properties, including land, leasehold interests in land, buildings, fixtures, equipment and personal property, including any franchise as that term is used in Sections 136.115 to 136.180 of the Kentucky Revised Statutes (the "*Franchise*"), described in **ATTACHMENT A** attached hereto (collectively, the "*Project*"), the Project being located within the boundaries of the Issuer.

**B.** The Project represents new investment and is expected to generate economic development within the Issuer's environs.

**C.** On even date herewith, the Issuer adopted a Bond Inducement Resolution (the "*Resolution*") providing for, among other things, the issuance of taxable industrial building revenue bonds in an aggregate principal amount of up to \$175,000,000 (the "*Bonds*") and the leasing of assets for the benefit of the Company, pursuant to Sections 103.200 through 103.285 of the Kentucky Revised Statutes ("*KRS*"), inclusive (the "*Industrial Revenue Bond Act*"), and KRS 65.940 through 65.956, inclusive (the "*Government Leasing Act*" and, together with the Industrial Revenue Bond Act, collectively the "*Act*"), to finance the acquisition, construction, equipping, and installation of the Project, to acquire title to the Project (including title to leasehold interests in land and the Franchise), and to lease the Project back to the Company, all pursuant to the Act.

**D.** The Issuer and the Company have agreed that title to Project (whether owned in fee or leased) will be conveyed to the Issuer and leased or subleased back to the Company pursuant to one or more lease agreements (each, a "*Lease Agreement*"), all pursuant to the Act, so long as the Bonds are outstanding, resulting in such assets being exempt from real and personal property taxes which have been or could be levied in the future, including but not limited to the ad valorem imposed pursuant to KRS 136.115 through 136.180, inclusive, on the Company's operating tangible property and any Franchise.

**E.** A condition of the Issuer's agreement to enter into the documents necessary to vest title to the Project in the Issuer and to affect the lease or sublease of the Project to the Company, the Company has agreed to make certain payments to the Issuer and to enter into this Agreement with respect thereto.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreement of the parties contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. Recitals Incorporated.** It is hereby found, determined, and declared that the recitals set forth in the preambles to this Agreement, including the definitions contained therein, are true and correct and hereby incorporated in this Section 1 by reference.

**Section 2. Interests in Project Assets Acquired by the Issuer Exempt From Taxation.**

**A. Acquired Project Assets.** The Issuer and the Company intend that the Issuer will acquire fee title to or leasehold interests in Project assets (the "*Acquired Assets*") and lease or sublease, as the case may be, same to the Company under the Act.

**B. Acquired Assets are Exempt.** It is understood, acknowledged, and agreed by the parties that pursuant to KRS 65.948 and KRS 103.285, the Acquired Assets, including any operating tangible property and Franchise, and the land underlying the Project are exempt from ad valorem taxation by the State, Issuer, and other political subdivisions in Kentucky to the same extent as other public property used for public purposes, so long as the Acquired Assets are owned by or leased to the Issuer and any balance remains outstanding on the Bonds.

**C. The Company's Leasehold Interest(s) in the Acquired Assets is Exempt from Local Taxation.** The parties further understand, acknowledge, and agree that (i) the Company's leasehold interest(s) in the Acquired Assets, so long as and to the extent that the Acquired Assets are owned by the Issuer, are exempt from local ad valorem taxation pursuant to KRS 132.200(7) and are taxable for state purposes at the ad valorem tax rate applicable to leasehold interests in industrial buildings and (ii) any proportion of the value of said leasehold interest created through any private financing is taxable at applicable state and local ad valorem tax rates.

**Section 3. The Company's Listing of Its Leasehold Interest(s).** The parties agree that the recording of the Lease Agreement with the County Clerk of Ballard County, Kentucky shall constitute the Company's listing of any taxable leasehold interest created thereby pursuant to KRS 132.220. The Company agrees annually to list any taxable leasehold interest in tangible personal property and any Franchise by listing such interest on and filing a Form 61A200 (Public Service Company Personal Property Tax Return) or other applicable tangible personal property tax return.

**Section 4. Agreement To Make PILOT Payments.** In consideration of the Issuer's agreement to issue the Bonds and take all other actions authorized by the Resolution, the Company hereby agrees to make a payment (each, a "*PILOT Payment*" and together, the "*PILOT Payments*") to the Issuer in each calendar year during the term of this agreement with respect to all series of the Bonds issued and outstanding, beginning on and after the first January 1<sup>st</sup> following issuance of the first series of said Bonds and on which any balance remains outstanding on those Bonds and the Issuer owns the Project or any portion thereof (each an "*Assessment Date*"). The PILOT Payments shall be calculated and paid as provided in this Section.

**A. Company PILOT Payments.** The Company hereby agrees that in each calendar year during the term of this Agreement beginning on and after the first Assessment Date following the issuance of the first series of Bonds, the Company shall pay (i) \$120,000.00 for each of the first twenty (20) Assessment Dates during the term of the Bonds; and (ii) \$60,000 for each of the final twenty (20) Assessment Dates of the term of the Bonds.

For clarification, a detailed example is provided in ATTACHMENT B attached hereto.



**B. Payment and Timing Of PILOT Payments.** The PILOT Payment payable in any calendar year hereunder shall be paid as follows: (i) \$16,000 shall be paid to the Ballard County Schools for each of the first twenty (20) Assessment Dates and \$8,000 shall be paid to the Schools for each of the final twenty (20) Assessment Dates; and (ii) the remainder shall be paid to the Issuer. Any PILOT Payment payable in any calendar year hereunder shall be paid at the same time and in the same manner as the regular county ad valorem taxes for such calendar year, except that the Company shall deliver the PILOT Payment as provided in Section 4(A) directly to the Ballard County Schools and the Issuer at the addresses provided in Section 6 below, instead of the regular tax collector. The PILOT Payment for each such calendar year shall be due and payable in full no later than two full months from the date the bill for the regular county ad valorem taxes is issued in accordance with KRS 134.015.

**Section 5. Termination.** Notwithstanding any other provision herein and with the exception of Sections 1 and 2 hereof, this Agreement shall terminate on the day immediately following the first date that no Bonds issued by the Issuer pursuant to the Resolution remain issued and outstanding. If for any reason any part of the property of the Project and financed by the Bonds is legally placed on the ad valorem tax rolls, the Company may in its sole discretion terminate its obligation thereafter to make the PILOT Payments with respect to the Project and thereafter pay ad valorem taxes on that property as required of a tax-paying entity. This Agreement shall terminate without further action of the parties should the Issuer terminate the Memorandum of Agreement of even date herewith between the Issuer and the Company pursuant to the terms of Section 14 thereof.

**Section 6. Notices.** All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows:

To the Issuer:

County of Ballard, Kentucky  
c/o County Judge/Executive  
Ballard County Courthouse Annex  
437 Ohio Street  
Wickliffe, Kentucky 42087

With a copy to:

Ballard County Attorney  
Ballard County Courthouse  
132 North 4<sup>th</sup> Street  
Wickliffe, Kentucky 42087

To the Schools:

Ballard County Schools  
Attn: Superintendent  
11 Vocational School Drive  
Barlow, Kentucky 42024

To the Company:

Song Sparrow Solar LLC  
100 California Street  
Suite 400  
San Francisco, California 94111

With a copy to:

Timothy J. Eifler  
Stoll Keenon Ogden PLLC  
400 West Market Street

Suite 2700  
Louisville, Kentucky 40202

The Issuer and the Company may by notice given hereunder designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent.

**Section 7. Entire Agreement.** This Agreement contains all of the agreements and conditions made between the parties hereto regarding the subject matter of this Agreement and there are no other agreements or understandings, written or oral, between the parties relating to the subject matter of this Agreement. This Agreement supersedes all prior agreements and understandings, written and oral, between the parties with respect to such subject matter. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by both parties hereto or their respect successors in interest. The invalidity, illegality, or unenforceability of any provision of this Agreement will not affect the validity, legality, or enforceability of the remaining provisions.

**Section 8. Binding Effect; No Third-Party Beneficiaries.** This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company, and their respective successors and assigns. The Issuer and the Company agree that this Agreement is not intended to create any third-party beneficiaries, and that no provision of this Agreement is intended to benefit any person or entity other than the signatories hereto. The provisions of this Agreement may be enforced solely by the Issuer, the Company, and their respective successors and assigns.

**Section 9 Execution In Counterparts.** This Agreement may be signed by each party upon a separate copy or separate signature page, and any combination of separate copies signed by all parties or including signature pages so signed will constitute a single counterpart of this Agreement. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. It will not be necessary, in proving this Agreement in any proceeding, to produce or account for more than one counterpart of this Agreement. This Agreement will become effective when one or more counterparts have been signed by each party, and delivered to the other parties, respectively. Any party may deliver an executed copy of this Agreement (and an executed copy of any documents contemplated by this Agreement) by facsimile transmission to another party or e-mailed .pdf files of scanned copies bearing their respective signatures, and such delivery will have the same force and effect as any other delivery of a manually signed copy of this Agreement (or such other document).

**Section 10. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

**Section 11. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

*[Signature Page To Follow]*

**SIGNATURE PAGE TO PAYMENT IN LIEU OF TAXES AGREEMENT**

**IN WITNESS WHEREOF**, the Issuer and the Company have caused this Payment in Lieu of Taxes Agreement to be executed in their respective names all as of the Effective Date.

**COUNTY OF BALLARD, KENTUCKY**

By: Todd Cooper  
Todd Cooper  
County Judge/Executive

Attest:

By: Katie S. Mercer  
Katie S. Mercer  
County Clerk

**SONG SPARROW SOLAR LLC,**  
a Kentucky limited liability company

By: John Woody  
Name: John Woody  
Its: Vice President

**ATTACHMENT B  
TO PILOT AGREEMENT  
PILOT EXAMPLE**

**Example.** For clarification, assume the Company completes the acquisition, construction, equipping, and installation of the Project and the Issuer issues the Bonds to finance the Project in November 2024. The Project has a rated capacity of 104 MW<sub>AC</sub>. The annual PILOT Payments for the Bonds would be calculated as follows as of the following Assessment Dates:

Assessment Date	PILOT			
		School	Issuer	Total
Jan. 1, 2025	1	\$16,000	\$104,000	\$120,000
Jan. 1, 2026	2	\$16,000	\$104,000	\$120,000
Jan. 1, 2027	3	\$16,000	\$104,000	\$120,000
Jan. 1, 2028	4	\$16,000	\$104,000	\$120,000
Jan. 1, 2029	5	\$16,000	\$104,000	\$120,000
Jan. 1, 2030	6	\$16,000	\$104,000	\$120,000
Jan. 1, 2031	7	\$16,000	\$104,000	\$120,000
Jan. 1, 2032	8	\$16,000	\$104,000	\$120,000
Jan. 1, 2033	9	\$16,000	\$104,000	\$120,000
Jan. 1, 2034	10	\$16,000	\$104,000	\$120,000
Jan. 1, 2035	11	\$16,000	\$104,000	\$120,000
Jan. 1, 2036	12	\$16,000	\$104,000	\$120,000
Jan. 1, 2037	13	\$16,000	\$104,000	\$120,000
Jan. 1, 2038	14	\$16,000	\$104,000	\$120,000
Jan. 1, 2039	15	\$16,000	\$104,000	\$120,000
Jan. 1, 2040	16	\$16,000	\$104,000	\$120,000
Jan. 1, 2041	17	\$16,000	\$104,000	\$120,000
Jan. 1, 2042	18	\$16,000	\$104,000	\$120,000
Jan. 1, 2043	19	\$16,000	\$104,000	\$120,000
Jan. 1, 2044	20	\$16,000	\$104,000	\$120,000
Jan. 1, 2045	21	\$8,000	\$52,000	\$60,000
Jan. 1, 2046	22	\$8,000	\$52,000	\$60,000
Jan. 1, 2047	23	\$8,000	\$52,000	\$60,000
Jan. 1, 2048	24	\$8,000	\$52,000	\$60,000
Jan. 1, 2049	25	\$8,000	\$52,000	\$60,000
Jan. 1, 2050	26	\$8,000	\$52,000	\$60,000
Jan. 1, 2051	27	\$8,000	\$52,000	\$60,000
Jan. 1, 2052	28	\$8,000	\$52,000	\$60,000
Jan. 1, 2053	29	\$8,000	\$52,000	\$60,000
Jan. 1, 2054	30	\$8,000	\$52,000	\$60,000
Jan. 1, 2055	31	\$8,000	\$52,000	\$60,000
Jan. 1, 2056	32	\$8,000	\$52,000	\$60,000
Jan. 1, 2057	33	\$8,000	\$52,000	\$60,000
Jan. 1, 2058	34	\$8,000	\$52,000	\$60,000
Jan. 1, 2059	35	\$8,000	\$52,000	\$60,000
Jan. 1, 2060	36	\$8,000	\$52,000	\$60,000
Jan. 1, 2061	37	\$8,000	\$52,000	\$60,000

Assessment Date	PILOT			
		School	Issuer	
Jan. 1, 2062	38	\$8,000	\$52,000	\$60,000
Jan. 1, 2063	39	\$8,000	\$52,000	\$60,000
Jan. 1, 2064	40	\$8,000	\$52,000	\$60,000
<b>Total:</b>				<b><u>\$3,600,000</u></b>

Case No. 2023-00256  
Song Sparrow Solar LLC  
Responses to Siting Board's Post-Hearing Request for Information

**POST-HEARING DR 6:**

Provide the customer service outline for both Clearway Energy and Song Sparrow, including but not limited to, the phone number and email that will be associated with the customer service for this proposed project.

**Response:** Please refer to the response to the Siting Board Staff's Post-Hearing Request for Information, Item 8, which provides a detailed description of the Complaint Resolution Program that addresses community complaints. Clearway Energy and Song Sparrow will implement the Complaint Resolution Program, and will establish a direct telephone number and email address prior to construction of the Project, which will be provided to Ballard County officials and emergency responders within the Project Area.

**Witness:** Nick Benjamin

Case No. 2023-00256  
Song Sparrow Solar LLC  
Responses to Siting Board's Post-Hearing Request for Information

**POST-HEARING DR 7:**

Provide a list, if any, of the endangered species identified in both the survey of the site and in conjunction with Fish and Wildlife. Consider this an ongoing request until a final Order is issued in this matter.

**Response:** A habitat field survey for threatened and endangered federally-listed species was completed for the Project. Prior to field surveys, a desktop review of the Project area was completed using publicly available information to coarsely assess the potential for suitable federally-listed threatened and endangered species habitats to occur. The preliminary records review and field surveys identified suitable habitat for federally-listed species within the Project area. Based on these results, consultation with U.S. Fish and Wildlife will be initiated to discuss the need for additional surveys.

**Witness:** Josh Adams

Case No. 2023-00256  
Song Sparrow Solar LLC  
Responses to Siting Board's Post-Hearing Request for Information

**POST-HEARING DR 8:**

Provide a detailed description of the Complaint Resolution Program that Song Sparrow will develop to address any complaints from community members.

**Response:** Song Sparrow Solar has created a Complaint Resolution Program to ensure that complaints are properly addressed, which has been provided as an exhibit below.

**Witness:** Nick Benjamin



# **Song Sparrow Solar LLC Complaint Resolution Program**

## **1. INTRODUCTION**

Song Sparrow Solar LLC (Song Sparrow) has developed a complaint resolution program for implementation during construction of the Song Sparrow project (the Project) to provide an effective process for the identification and resolution of concerns voiced by members of the community. The program describes the procedure to file a complaint, community notification parameters, incident documentation, and commitment resolution.

## **2. COMPLAINT RESOLUTION PROCEDURE**

### **2.1 Song Sparrow Contacts**

Song Sparrow will establish a direct telephone number and email address prior to construction of the Project and will provide that information to Ballard County officials and emergency responders within the Project Area.

Song Sparrow will employ the individuals responsible for compliance with a certificate of construction during construction and operation of the Project. Dedicated Song Sparrow personnel receiving a complaint will complete a Complaint Resolution Form (Attachment 1).

Individuals wishing to file a complaint will be provided three options, including:

1. Individuals file a verbal complaint using the direct telephone number that will be included in this plan and provided to Ballard County officials and emergency responders before the start of construction.

2. Individuals may submit written complaints by mail to:

Song Sparrow Solar LLC  
Clearway Energy Group LLC  
4900 N Scottsdale Road, Suite 5000  
Scottsdale, AZ 85251

3. Individuals may submit written complaints via email to dedicated Song Sparrow personnel during construction. Email addresses will be included in this plan and provided to Ballard County officials and emergency responders once established.

The following information must be provided by the complainant for Song Sparrow to accurately and thoroughly address complaints:

- Name and contact information of the complainant;
- Date of complaint;  
Detailed description of the complaint, including, if possible, the location, date, and time that the issue occurred, and any other details that can help identify and resolve the issue.

## **2.2 Notification**

In addition to providing the Song Sparrow contact information and procedure to Ballard County officials and emergency responders, Song Sparrow will maintain a Project contact list for residents and will provide notification to residences located within 2,400 feet of construction activities that construction is about to commence, which is consistent with the consultant's report submitted in the Kentucky Siting Board case.

## **2.3 Complaint Documentation and Follow-Up**

Song Sparrow will coordinate with the complainant to effectively address issues such that both parties are satisfied. Song Sparrow will enter complaints into a complaint log, document the details of the complaint, and assign a point of contact to investigate the complaint. The Construction Manager, or alternative designee, will be responsible for initiating the review of complaints received during the construction process.

Individuals who register a complaint with Song Sparrow will receive correspondence from Song Sparrow no later than five (5) business days after registering the complaint. The intent of the initial correspondence is to gather more information to better understand the complaint.

Song Sparrow will evaluate whether the complaint violates federal, state, or local laws as well as conditions to permits and approvals and determine if there are notifications or required steps to address those violations. Song Sparrow will also determine if outside resources are necessary to address issues.

Once a corrective action or response has been determined, Song Sparrow will contact the Complainant by telephone or return mail to inform them of the proposed corrective action, if any. Song Sparrow is committed to resolving reasonable complaints within 30 days, unless extenuating circumstances necessitate a longer time-period, or it is determined that the complaint is unresolvable. If resolution of the complaint will take longer than 30 days, Song Sparrow will provide an explanation to the complainant for the extended period and the timeline for addressing the complaint.

Song Sparrow will keep a logbook to register complaints received. The logbook will include a Complaint Resolution Form (Attachment 1) that details the contact information of the complainant, the nature of the complaint, and the date the complaint was received.

The logbook will also document Song Sparrow's recommended resolution, the date agreement was reached on a proposed resolution, and the date when the proposed resolution was implemented. Song Sparrow personnel will generate an annual report based on the information recorded in the logbook and file the report at the on-site construction management office.

**ATTACHMENT 1**

**Song Sparrow  
Complaint Resolution Form**

Complaint Log Number: _____ Complainant's name and address:  Phone number/email:
Date complaint received: _____ Time complaint received: _____ Date complainant first contacted: _____ Date complaint resolved: _____
Nature of complaint:
Description of issue after investigation:
Description of corrective measures proposed and implemented:
Complainant's signature: _____ Date: _____
This information is certified to be correct: Site Manager's Signature: _____ Date: _____

(Attach additional pages and supporting documentation, as required.)

Case No. 2023-00256  
Song Sparrow Solar LLC  
Responses to Siting Board's Post-Hearing Request for Information

**POST-HEARING DR 9:**

Provide the entity that will employ the individuals responsible for compliance with a certificate of construction during construction and operation of the project if granted.

**Response:** Clearway Energy Group LLC is the entity that will employ the individuals responsible for compliance with a certificate of construction during construction and operation of the Project.

**Witness:** Nick Benjamin

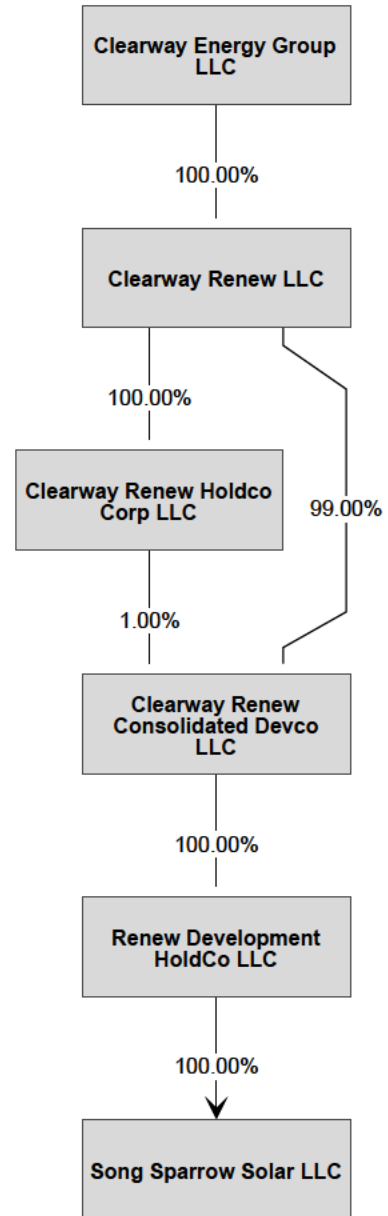
Case No. 2023-00256  
Song Sparrow Solar LLC  
Responses to Siting Board's Post-Hearing Request for Information

**POST-HEARING DR 10:**

Refer to the Application, page 16, paragraph 2. Provide the entities with an ownership interest in Song Sparrow that were referenced as not having any environmental violations.

**Response:** Please refer to the exhibit provided by Song Sparrow Solar in response to the Siting Board Staff's First Request for Information, Item 6, dated October 20, 2023, which is also included as an exhibit below.

**Witness:** Nick Benjamin



**COMMONWEALTH OF KENTUCKY  
BEFORE THE KENTUCKY STATE BOARD  
ON ELECTRIC GENERATION AND TRANSMISSION SITING**

**In the Matter of:**

**In the Matter of the Electronic Application of Song )  
Sparrow Solar LLC for a Certificate of Construction )  
for an Approximately 104 Megawatt Merchant Electric ) Case No. 2023-00256  
Generating Facility in Ballard County, Kentucky )  
Pursuant to KRS 278.700 and 807 KAR 5:110 )**

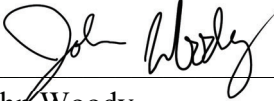
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**CERTIFICATION**

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This is to certify that I have supervised the preparation of the Song Sparrow Solar LLC's responses to the Kentucky Siting Board on Electric Generation and Transmission Siting's Post-Hearing Data Requests and that the responses to the request are true and accurate to the best of my knowledge, information, and belief after reasonable inquiry.

February 2, 2024  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John Woody  
Senior Vice President