

**POWER PURCHASE AGREEMENT**

**AMONG**

**RAGL BN, LLC,**

**LOUISVILLE GAS AND ELECTRIC COMPANY**

**AND**

**KENTUCKY UTILITIES COMPANY**

**October 6, 2021**

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**Power Purchase Agreement**  
**among**  
**RAGL Bn LLC,**  
**Louisville Gas and Electric Company, and Kentucky Utilities Company**

This Power Purchase Agreement (this “PPA”) is made as of October 6, 2021, by and among (i) **RAGL bn, LLC** (“Seller”), a Delaware limited liability company with a principal place of business at 13123 E Emerald Coast Pkwy, Suite B#158, Inlet Beach, FL 32461, (ii) **Louisville Gas and Electric Company** (“LG&E”), a Kentucky corporation with a principal office at 220 West Main Street, Louisville, Kentucky 40202, and (iii) **Kentucky Utilities Company** (“KU”), a Kentucky and Virginia corporation with its principal office at One Quality Street, Lexington, Kentucky 40507. LG&E and KU are sometimes hereinafter referred to individually as “Buyer” and collectively (and severally liable as provided in Section 12.6 below) as the “Buyers.”

**WHEREAS**, Seller desires to develop, design, construct, own or lease, and operate a solar photovoltaic electric generating facility in McCracken 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 Buyers at the Point of Interconnection the Solar Energy Output generated by the Facility and any Renewable Energy Benefits associated with such Solar Energy Output.

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

**ARTICLE 1**  
**Definitions and Rules of Interpretation**

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

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

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

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

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

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

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

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

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

(B) Except and only to the extent expressly stated otherwise herein, Seller expressly recognizes that, for purposes hereof, the Interconnection Provider shall be deemed to be a separate entity and separate contracting party from Buyers whether

or not the Interconnection Agreement is entered into with a Buyer or an Affiliate of Buyer, in its capacity as the Interconnection Provider. Seller acknowledges that Buyers, acting in their capacity as the purchasers hereunder, have no responsibility for or control over Interconnection Provider, and are not liable under this Agreement for any breach of any obligation or duty of the Interconnection Provider under the Interconnection Agreement.

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

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

“Abandonment” means, 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 is, 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).

“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). (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 and the LD Monetary Factor of █████ MWh to arrive at █████ ( $(████ .20) \times 500 \times █████ = █████$ )

“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 ninety (90) 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 the earliest Availability Unsatisfactory Day described in such Availability Underperformance Notice 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 Buyers’ Standard Rate Rider LQF or a successor provision of Buyers’ tariffs, expressed in Dollars.

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

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

“Buyer Curtailment Order” means an instruction from Buyers 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.

“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).

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

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

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

“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 Buyers consistent with the provisions of this PPA.

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

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

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

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

“Credit Rating Agency” or “CRA” means 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 ██████████ per MWac of Expected Facility Capacity per Day.

“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) a 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).

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

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

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

“Effective Date” means the date first written above.

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

“Emergency Condition” means a 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.

“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 [REDACTED] percent [REDACTED] of the Solar Energy Payment Rate.

“Excused Maintenance Outage” means: (1) Scheduled Maintenance Outages outside the Non Scheduled Maintenance Period; and (2) up to thirty (30) hours per 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 125 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 (a) if Seller elects its option in Section 3.3(C), the Facility Capacity at and after the Build-Out Date shall be the Demonstrated Capacity as of the Build-Out Date, and (b) if Seller elects the option in Section 3.3(A), the Facility Capacity shall be as described in Section 3.3(A).

“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, backleverage 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.

“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 each Buyer, the execution, delivery or performance of this PPA or the procurement pursuant to this PPA of the Solar Energy Output and the Renewable Energy Benefits and recovery of the related costs. Governmental Approval shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation with regard to any Non-Governmental Compliance Obligations.

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

“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.

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

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

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

“Interconnection 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.

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

"Investment Grade Rating" means, 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.

"KU Percentage" means 84%.

"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 the \$/MWh index price as published in Argus Air Daily under "Green-e Eligible RECs" for "National any" for the vintage that matches the delivery Year. The Argus Air Daily index price for the same Day as the Availability Day shall be used; provided, if the Availability Day falls on a Day on which Argus Air Daily is not published, the Argus Air Daily index price for the most recent prior Day on which Argus Air Daily was published 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 Percentage” means 16%.

“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) or Section 3.3(B)).

“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 Buyers and delivered to the Point of Interconnection for sale to Buyers, whether or not occurring prior to or subsequent to the Commercial Operation Date.

“Moody’s” means Moody’s Investors Service, Inc. Moody’s Analytics, Inc. and their affiliates.

“Month” means a calendar month.

“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 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).

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

"Prudent Industry Practice(s)" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by operators of utility-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.

“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(B).

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

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

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

“Renewable Energy Certificate” or “REC” means a unit that represents all of the non-power attributes from one MWh of electricity generation from a renewable generating unit including the property rights to the environmental, social and other non-power attributes of a renewable electricity generation portfolio energy system or efficiency measure that the Facility is entitled to receive pursuant to Applicable Law, including, 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, 2024, 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 Buyers’ representative(s) responsible for dispatch of generating units and scheduling energy and capacity from the Facility.

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

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

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

“Seller’s Tier 1 CPs” is defined in Section 6.1(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 a Buyer of its obligations under the PPA, (ii) any delay or failure by a Buyer in giving any approval such Buyer is required to give under this PPA by the time by which such Buyer required is required to give such approval under this PPA, or (iii) any failure of a 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.

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

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

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

“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 ████████ per MWac of Facility Capacity at such time, decreasing by ████████ per MWac of Facility Capacity as of and at each annual anniversary of the Commercial Operation Date; provided that the Termination Payment Damages Cap shall not be less than ████████ 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 Buyers at the Point of Interconnection, and purchased by Buyers, pursuant to Section 10.2(C) and Section 4.3.

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

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

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 Buyers.

## **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) If Seller has executed an Interim LGIA, the Expected Facility Capacity for purposes of determining whether Commercial Operation has been achieved and during the period Seller uses Interim Interconnection Service and for purposes of calculating the Expected Amount and Deemed Delivered Energy prior to the effectiveness of the Interconnection Agreement, shall be decreased to the amount permitted to be interconnected pursuant to such Interim LGIA; provided that Seller provides notice to Buyers with written notice of such adjustment on or prior to March 31, 2023. Once the Interconnection Agreement becomes effective and permits Seller to make available Solar Energy Output at a capacity higher than that in the Interim LGIA, Seller shall be entitled to increase the Facility Capacity up to the amount that Seller is authorized to interconnect pursuant to the Interconnection Agreement (but not to exceed the Expected Facility Capacity)).

(B) 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.

(C) 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 three hundred sixty-five (365) Days after the Commercial Operation Date (the expiration of such three hundred sixty-five (365) 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; (ii) each Day after a date on or before which Section 6.2 states that a Buyers' Conditions Precedent should occur and before the date that Buyers deliver Buyers' CP Confirmation Notice with respect to such Buyers' Conditions Precedent; (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 after the date that is ninety (90) Days prior to the Required Commercial Operation Date, as it stood before any extension pursuant to this Section 4.1, 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; and provided further that the Required Commercial Operation Date shall not be extended by more than two hundred seventy (270) Days in the aggregate for the events described in clauses (i) and (iv) above.

(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 one hundred (180) Days, by notifying Buyers 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 one hundred eighty (180) Day extension period described in Section 4.1(C). If Commercial Operation has not occurred by the end of such one hundred eighty (180) Day extension period, Buyers may elect to terminate this Agreement with immediate effect upon written notice delivered to Seller within ten (10) Days after the end of such one hundred eighty (180) Day extension period. If Buyers fail to so terminate the Agreement, Seller shall have an additional period of up to ninety (90) Days following the end of the one hundred eighty (180) Day extension period to achieve Commercial Operation, and if Commercial Operation is not so achieved within such ninety (90) 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), Buyers 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 Buyers fail to so terminate the Agreement, Seller shall have an additional period of up to ninety (90) Days following the Required Commercial Operation Date to achieve Commercial Operation, and if Commercial Operation is not so achieved within such ninety (90) 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 Buyers; 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 Buyers; (iii) if the Required Commercial Operation Date is extended more than 270 Days under Section 4.1(B) as a result of circumstances described in clause (i) and/or clause (iv) 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 Buyers with respect to delays resulting from circumstances described in clause (i) and/or clause (iv) 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 Buyers 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 Buyers are entitled to Daily Delay Damages, Buyers 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, Buyers 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 Buyers are entitled to Daily Delay Damages, Seller's obligation to pay such Daily Delay Damages shall survive such

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

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

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

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

(E) Seller shall have furnished 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 Buyers. Seller may, by written notice to Buyers 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 Test Energy generated prior to the Commercial Operation Date to Buyers for the compensation described in Section 8.1(B). In the event Seller timely makes such election, (i) Buyers shall request and attempt to procure monthly Test Period Transmission Service at Buyers’ expense within five (5) Business Days of Seller’s notice of such election to Buyers and (ii) Seller shall coordinate the production and delivery of Test Energy with Buyers, including providing Buyers with prior notice of delivery as

Buyers may reasonably request. 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, Buyers 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) Buyers 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 sixty (60) 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 Buyers. 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 Test Energy generated prior to the Commercial Operation Date to Persons other than Buyers. 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, Buyers 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, Buyers 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 Solar Energy Output and Test Energy from the Facility to Buyers at the Point of Interconnection at the required voltage. Buyers shall be responsible for all transmission arrangements and costs or charges, if any, imposed in connection with the delivery of Solar Energy Output at and from the Point of Interconnection, including transmission costs, transmission line losses, ancillary service arrangements and costs, control area or generator imbalance services, imbalance charges and associated penalties. Seller shall bear no responsibility related to delivery past the Point of Interconnection or any ancillary, control area or generator imbalance services required pursuant to Buyers' open access transmission tariff or any other transmission utility, regional transmission organization, NERC, a RE or any other entity. Seller shall diligently negotiate an Interconnection Agreement with the Interconnection Provider and post and maintain any and all security for payment and

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

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

5.4 Interconnection Information. Subject to FERC regulations and the FERC standards of conduct, Buyers 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 March 31, 2022:

- (i) Seller shall have executed such easements, rights-of-way and other real estate contracts as may be necessary for the

transmission line from the solar project to and including the Point of Interconnection;

- (ii) Seller shall have received a Phase I environmental site assessment for the Site that is reasonably satisfactory to Seller;
- (iii) Seller shall have received a preliminary title report with regard to the Site that does not include any third party encumbrances unacceptable to Seller (acting in its reasonable discretion); and
- (iv) the Buyers' 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 the Buyers, in their sole discretion, and are mutually agreed to in a written amendment to this Agreement.

(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 December 31, 2022:

- (i) Seller shall have received all siting, zoning, planning commission, conditional use or other discretionary permits and other Governmental Approvals 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.

(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 March 31, 2023; provided, however, that if the Seller's Tier 2 Confirmation Notice is issued after December 31, 2022, then, without affecting any termination right of either Party with respect to a delay in Seller's Tier 2 Confirmation Notice, the date by which Seller must satisfy Seller's Tier 3 CPs in Section 6.1(C)(i) shall be extended on a Day-for-Day basis, with such extended date treated for purposes of Section 4.1(B) as the date on or before which this Section 6.1 states that Seller's Tier 2 CP should occur:

- (i) Seller shall have received approval for the Facility under the Kentucky Public Service Commission Electric Generation and Transmission Siting Board Energy, and such approval shall be final and non-appealable;
- (ii) Seller shall have received a report from Buyers' ITO confirming that the aggregate non-refundable or non-

creditable cost to Seller for interconnection, network, affected system and other upgrades is reasonably expected not to exceed [REDACTED];

- (iii) Seller shall have received a report from an engineering firm engaged by Seller confirming that the aggregate non-refundable or non-creditable cost to Seller for interconnection, network, affected system and other upgrades is reasonably expected not to exceed [REDACTED]; and
- (iv) Seller shall have executed (i) 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 or (ii) an Interim LGIA consistent with Section 3.3(A).

(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 CP") on or before November 1, 2023:

- (i) Financial Closing has occurred.

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

(A) Buyers obligations under this PPA are, subject to Section 6.3 below, conditioned upon the occurrence (or waiver by Buyer) as described in Section 6.3 of the Buyer's Conditions Precedent described in this Section 6.2(A) (the "Buyers' Tier 1 CPs") on or before March 31, 2022:

- (i) Buyers shall have entered into renewable purchase agreements or other contracts with retail customers of Buyers for the purchase from Buyer of the Solar Energy Output and the Renewable Energy Benefits (the "RPAs") on terms satisfactory to Buyers in their sole discretion;
- (ii) Buyers shall have received all Commission Approvals necessary, as determined in the Buyers' sole discretion, to allow the Buyers to perform their obligations under the RPAs, without any requirement to modify the RPAs, unless such requirements are acceptable to Buyers in their sole discretion and are agreed to in writing by the counterparties to the RPAs;



- (iii) Buyers shall, if required in connection with obtaining Commission Approvals with respect to the RPAs, have received all Commission Approvals necessary to perform their obligations under this Agreement, without any requirement to modify this Agreement, unless such modifications are acceptable to both Seller, in its sole discretion, and the Buyers, in their sole discretion, and are mutually agreed to in a written amendment to this Agreement; and
- (iv) Buyers 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.

### 6.3 Failure of Condition Precedent.

(A) Tier 1 CPs. The Tier 1 Seller's CPs and Tier 1 Buyers' CPs (collectively the "Tier 1 CPs") shall be deemed satisfied upon (i) delivery by Seller to Buyers of a written notice stating that Seller has achieved or waived all Tier 1 Seller's CPs and that Seller does not object to any conditions of the approvals on which the Tier 1 Buyers' CPs are based (the "Seller's Tier 1 CP Confirmation Notice"); and (ii) delivery by Buyers to Seller of a written notice stating that Buyers have achieved or waived all Tier 1 Buyers' CPs and that Buyer does not object to any conditions of the approvals on which the Tier 1 Buyers' CPs are based (the "Buyers' Tier 1 CP Confirmation Notice"). If the Seller's Tier 1 CP Confirmation Notice and/or the Buyers' Tier 1 CP Confirmation Notice are not delivered by March 31, 2022, either Party may deliver a termination notice to the other Party (a "Tier 1 CP Termination Notice") with such termination effective on the date sixty (60) Days following such Tier 1 CP Termination Notice unless the Party that did not deliver the CP Confirmation Notice that is the subject of such Tier 1 CP Termination Notice by March 31, 2022 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 May 31, 2022 if it reasonably determines that such Party's Tier 1 CPs will not be achieved by May 31, 2022. For the avoidance of doubt, the Parties agree that, once the Tier 1 CPs are satisfied, no matter arising from an RPA shall excuse Buyers from any obligation under this Agreement.

(B) Tier 2 CPs. The Tier 2 Seller's CP shall be deemed satisfied upon delivery by Seller to Buyers of a written notice stating that Seller has achieved 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 December 31, 2022, either Party deliver a termination notice to the other Party (a "Tier 2 CP Termination Notice") with such termination effective on the date sixty (60) Days following such Tier 2 CP Termination Notice unless, before the expiration of such sixty (60) Day period, Seller delivers the Seller's Tier 2 CP Confirmation Notice, in which case the Tier 2 CP Termination Notice shall be automatically rescinded and this Agreement shall continue in full force and effect.

Seller may provide a Tier 2 CP Termination Notice with immediate effect at any time prior to March 1, 2023 if it reasonably determines that any Tier 2 Seller's CPs will not be achieved by March 1, 2023.

(C) Tier 3 CPs. The Tier 3 Seller's CPs shall be deemed satisfied upon delivery by Seller to Buyers of a written notice stating that Seller has achieved or waived all Tier 3 Seller's CPs (the "Seller's Tier 3 CP Confirmation Notice"). Subject to any extension as described in Section 6.1(C), if the Seller's Tier 3 CP Confirmation Notice is not delivered by March 31, 2023, 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 March 31, 2023 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 May 31, 2023 if it reasonably determines that the Seller's Tier 3 CPs will not be achieved by May 31, 2023.

(D) Tier 4 CPs. The Tier 4 Seller's CP shall be deemed satisfied upon delivery by Seller to Buyers of a written notice stating that Seller has achieved or waived all Tier 4 Seller's CPs (the "Seller's Tier 4 CP Confirmation Notice"). If the Seller's Tier 4 CP Confirmation Notice is not delivered by November 1, 2023, 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 January 1, 2024 if it reasonably determines that any Tier 4 Seller's CPs will not be achieved by January 1, 2024.

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

## **ARTICLE 7**

### **Sale and Purchase of Solar Energy Output and Renewable Energy Benefits**

#### **7.1 Sale and Purchase of Solar Energy Output and Capacity.**

(A) Beginning on the Commercial Operation Date and continuing through the end of the Term, Seller shall sell to Buyers, and Buyers shall purchase from Seller, all right, title and interest in and to the Solar Energy Output (and the associated Renewable Energy Benefits associated with such Solar Energy Output) that Seller makes available at the Point of Interconnection. LG&E shall purchase the LG&E Percentage of such Solar Energy Output (and the associated Renewable Energy Benefits associated with such Solar Energy Output), and KU shall purchase the KU Percentage of such Solar

Energy Output (and the associated Renewable Energy Benefits associated with and Solar Energy Output), all as provided in Section 8.1.

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

(C) Ownership by Buyers of Renewable Energy Benefits associated with Solar Energy Output purchased by Buyers as set forth in Section 7.1(A) shall be for the entire Term of this PPA, including any Renewable Energy Benefits that are reserved or “banked” throughout the Term of this PPA, but not used, sold, assigned or otherwise transferred during the Term of this PPA. Each Buyer may, after so obtaining such 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 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 Buyers of their obligation to pay for Solar Energy Output and 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 Buyers from the disposition of Renewable Energy Benefits Reporting Rights held by Buyers as set forth in Section 7.1(A) shall inure solely to the benefit of Buyers.

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

(E) Seller and Buyers agree that, as of the Effective Date, the Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyers shall be documented and exist through Renewable Energy Certificates that are reportable and transferable on either GATS or MRETS. On or before April 1, 2023, Buyers shall notify Seller in writing whether they desire to have Seller obtain registration with either GATS or MRETS for the Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyers. Seller shall thereafter cause the Facility to obtain and maintain registration in good standing with either GATS or MRETS (as so elected by Buyers) 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 Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyers. Buyers shall, at their 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 Buyers) in order to receive the Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyers. During the Term, Seller shall effectuate the transfer of 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 Buyers). In the event that the Buyers no longer desire to have the Renewable Energy Benefits documented and transferred through GATS or MRETS (as so elected by Buyers) or either such elected system ceases to exist, Buyers

may designate a new system of reporting and trading the Renewable Energy Benefits generated by the Facility that will be transferred from Seller to Buyers. Upon such election, Seller and Buyers 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 Renewable Energy Benefits to Buyers in accordance with the operating rules of such system. Buyers shall always have the right to elect to have Seller transfer Renewable Energy Benefits through mutually agreed written instruments that document the transfer of such Renewable Energy Benefits to Buyers 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 Renewable Energy Benefits (including Renewable Energy Certificates), (b) creating, registering and transferring 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 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, Buyers 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 Renewable Energy Benefits (or Renewable Energy Certificates) as a result of any Change in Applicable Law, or (b) retire any Renewable Energy Benefits on any tracking system or otherwise on behalf of the Buyers.

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

- (i) the sum of the LG&E Percentage and the KU Percentage following such change shall be equal to one hundred percent (100 %);
- (ii) the Buyer for which the percentage will increase (i) is not subject to a Credit Event or reasonably likely to suffer a Credit Event, (ii) is not a defaulting party with respect to an ongoing Buyer Event of Default, and (iii) has not been a defaulting party with respect to a Buyer Event of Default more than once in the seven hundred thirty (730) Day period prior to the proposed effective date of such change; and
- (iii) the Buyers have obtained any and all Governmental Approvals required for such change.

(G) A change requested under Section 7.1(F) that satisfies the conditions stated in Section 7.1(F) shall become effective on the first Day of the Month

following the Month in which the thirtieth (30<sup>th</sup>) Day following Buyers' notice falls, at which time this PPA shall be deemed amended with respect to the LG&E Percentage and KU Percentage.

## 7.2 Scheduling.

(A) Scheduling shall be on a "must-take" basis, except to the extent that the Solar Energy Output of the Facility is reduced as a result of Forced Outages, Scheduled Maintenance Outages, Additional Maintenance Outages, Force Majeure events and Emergency Conditions. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyers with a good faith 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 Buyers 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 Buyers, Seller shall promptly notify Buyers of such change or predicted change.

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

## **ARTICLE 8 Payment Calculations**

### 8.1 Payments to Seller.

(A) Except as otherwise provided in this PPA, each Buyer shall pay Seller a monthly payment due and payable in each Monthly Billing Period in accordance with the invoicing procedures set forth in Section 9.1 equal to the following amount (the "Solar Energy Payment"): the sum, over all hours of the Monthly Billing Period, of the LG&E Percentage or the KU Percentage (as applicable), multiplied by the product of: (i)

the Solar Energy Payment Rate; and (ii) the sum of (a) Solar Energy Output (MWh) delivered to the Point of Interconnection from the Facility during that hour plus (b) the sum of all Deemed Delivered Energy during that hour; provided, however, if the aggregate Solar Energy Output during a Year includes Excess Solar Energy, then the portion of any Solar Energy Payment attributable to such Excess Solar Energy shall be determined as set forth above in this Section 8.1(A), but using the Excess Solar Energy Payment Rate in place of the Solar Energy Payment Rate.

(B) Test Energy Payment. In the event Seller timely makes the election described in Section 4.3, each Buyer shall pay Seller for Test Energy generated prior to the Commercial Operation Date by making a monthly payment due and payable in each Monthly Billing Period in accordance with the invoicing procedures set forth in Section 9.1, equal to the product of the LG&E Percentage or the KU Percentage (as applicable) of: (a) \$20.00/MWh; and (b) the amount of Test Energy (MWh) delivered during that Month.

## 8.2 Curtailed Energy.

(A) Buyers shall have the right to order Seller to curtail Solar Energy Output through Buyer Curtailment Orders, provided that Buyers shall pay Seller for the Deemed Delivered Energy associated with a Buyer Curtailment Period. 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) a 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 Buyers pursuant to Section 8.1(A) shall be reduced by an amount equal to ■■■ 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 Buyers 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 twice in each 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) Seller guarantees that the actual Availability of the Facility shall be at least █████ percent (██%) (the "Guaranteed Availability") measured over each Availability Day. From time to time, Buyers may, if Buyers' data indicates that one or more consecutive Availability Days constitute Availability Unsatisfactory 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 one or more such Availability Days, Buyers 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 Buyers (pro-rata to each Buyer in proportion to the LG&E Percentage or KU Percentage, as applicable) 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.

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

(E) Each Party agrees and acknowledges that (i) the damages that Buyers would incur due to the Facility's failure to achieve the Guaranteed Availability would be difficult or impossible to predict with certainty, (ii) the amount contemplated by this provision are a fair and reasonable calculation of such damages, and (iii) the required payment by Seller under this Section 8.3 shall be Buyers' 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(C) 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 Points of Delivery at 11:59 p.m. EST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) On or before the tenth (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 each Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show information and calculations, in reasonable detail. Each Buyer shall pay Seller such invoiced amounts 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. Each Buyer shall pay Seller such invoiced amounts within fifteen (15) Days of the date of such invoice.

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

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

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

9.2 Miscellaneous Payments. 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 Buyers under this PPA shall be made in Dollars in immediately available cleared funds by automated clearing house (ACH) or wire transfer into the relevant account specified in this PPA or, if no account is specified, into the account designated by the receiving Party by written notice consistent with Article 13 below.

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

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

9.5 Disputed Items.

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

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

9.6 Statement Errors. In the event that either Party becomes aware of any error in any statement within 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 Solar Energy Output delivered by Seller to Buyers hereunder is on a wholesale basis. Buyers may use the Solar Energy Output for their own consumption or resell it to third parties. Buyers shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably requested by Seller, to evidence that the deliveries of Solar Energy Output hereunder are sales for resale.

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

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

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

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

9.8 Set-Off and Payment Adjustments. All payments between the Parties under this PPA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of set-off or otherwise. Payments to be made under this PPA shall, for a period of not longer than 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 a Buyer fails to make (directly or through the other Buyer) timely payment of two (2) or more monthly invoices of Seller in any twelve (12) Month period, such Buyer shall provide Seller (following Seller's invoice for such amount) with a cash security deposit from such Buyer equal to the average amount of the previous twelve (12) monthly invoices to such Buyer, and Seller shall retain such security deposit until such time as such Buyer has timely paid twelve (12) consecutive monthly invoices, during which time Seller may apply such funds towards any invoice that is not paid by such Buyer when due.

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

## **ARTICLE 10**

### **Operations and Maintenance**

#### 10.1 Construction of the Facility.

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

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

#### 10.2 Commissioning Tests.

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

(B) The results of Commissioning Tests, including the use of testing consistent with 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(C).

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

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

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

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

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

10.6 Access to and Inspection of Facility.

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

(B) No inspections of the Facility, whether by a Buyer or otherwise, shall relieve Seller of its obligation to maintain the Facility and operate the same in accordance with Prudent Industry Practices and Applicable Laws. In no event shall any statement, representation, or lack thereof by a Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Facility. Any inspection of Seller's property or equipment

by a Buyer or any review by a Buyer or consent by a Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Facility equipment nor as a warranty or guarantee.

## **ARTICLE 11 Security**

11.1 Seller Security. Within ten (10) Business Days after the satisfaction of the Tier 1 Buyers' CP, Seller shall cause the Seller Credit Support to be provided to Buyers. The "Seller Credit Support" shall be maintained throughout the term of this Agreement and take the form of (i) a 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 [REDACTED] 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 Buyers 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), Buyers 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 by Seller to a third party, or diversion by Seller for any use of Solar Energy Output committed to Buyers by Seller, other than during any Event of Default of a Buyer or during any period during which a Buyer does not take delivery of Solar Energy Output as described herein; and.
- (iv) Seller's failure to establish and maintain the Seller Credit Support in accordance with Article 11.

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

(C) 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 Buyers 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 Buyers 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 Buyers to Seller and the Financing Parties:

- (i) Seller's Abandonment of the Facility;
- (ii) Seller's assignment of this PPA except as permitted in accordance with Article 19;
- (iii) Any representation or warranty made by Seller in this PPA shall prove to have been false or misleading in any material respect when made and such misrepresentation or breach of warranty would reasonably be expected to result in a material adverse impact on Buyers;
- (iv) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor that could materially impact Seller's ability to perform

its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period; 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 one or both Buyers.

(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 Buyers.

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

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

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

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

- (i) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against such Buyer; provided, however, that such Buyer does not obtain a stay or dismissal of the filing within the cure period;



- (ii) Such Buyer's assignment of this PPA, except as permitted in accordance with Article 19;
- (iii) Any representation or warranty made by such Buyer in this PPA shall prove to have been false or misleading in any material respect when made and such misrepresentation or breach of warranty is reasonably expected to result in a material adverse impact on Seller; or
- (iv) Such Buyer's failure to comply with any other material obligation of such Buyer under this PPA, which would result in a material adverse impact on Seller.

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

12.4 Termination.

(A) Upon the occurrence of an Event of Default that is not cured within the applicable cure period, if any, the non-defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and thirty (30) Days after the notice thereof, 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"); provided, however, that if a Buyer Event of Default has occurred with respect to one Buyer but not the other Buyer, then Seller may terminate this Agreement with regard to only the Buyer that is the subject of such Buyer Event of Default or may elect to terminate this Agreement with respect to both Buyers (in which case only the Buyer with respect to which such Event of Default has occurred shall be deemed to be a defaulting Party hereunder, and the other Buyer shall not have liability to Seller as a result of such termination). Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA, 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, Buyers understand and agree that Seller may not be able to sell the Solar Energy Output on a commercially reasonable basis, and therefore Seller would not be able to mitigate its losses by selling the Solar Energy Output to a third-party, and therefore its losses would equal the net present value (determined using a discount rate of five percent (5%)) at the time of termination of all Solar Energy Output that would have been produced from the date of termination of the 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 Buyers make a termination payment to Seller, if Seller is able to enter into new arrangements to sell the Solar Energy Output and Renewable Energy Benefits of the Facility 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 Buyers 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)), Buyers’ cost-to-cover losses shall be calculated using the weighted average of the Avoided Energy Cost 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 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 Renewable Energy Benefits. Such determination of Buyer’s losses shall be based on the net present value (determined using a discount rate of five percent (5%)) of losses for the remainder of the Term at the time of termination.

(E) Seller’s liability under Section 12.4(D) shall be limited to 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. Each Buyer acknowledges and agrees that no owner, member, investor, lender, lessor, officer, director, employee, or agent of Seller shall have any obligation to Buyers arising under this PPA, and that Buyers shall seek recourse solely against Seller, its assets, and the Seller Credit Support in the event of any breach of this PPA by Seller. Seller acknowledges and agrees that no owner, member, investor, lender, lessor, officer, director, employee, or agent of a Buyer shall have any obligation to Seller arising under this PPA, and that Seller shall seek recourse solely against Buyers and their assets in the event of any breach of this PPA by a Buyer.

## **ARTICLE 13**

### **Contract Administration and Notices**

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit A as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall be made by personal delivery, recognized express courier, or electronic mail (immediately followed by recognized express courier). Any

such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close, in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations shall be exempt from this Section 13.1.

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

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

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

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

## **ARTICLE 14**

### **Force Majeure**

#### 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 ongoing as of the Effective Date, 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; 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 any permit serving as the basis for a Buyers’ CP or Seller’s CP shall not constitute Force Majeure unless a 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 Buyers may, at any time following the end of

such period if the Force Majeure event is still in effect, terminate this PPA upon written notice to the other Parties, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

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

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

14.3 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure event, the Party claiming that a Force Majeure event has occurred shall notify the other Party 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. 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. 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 Buyers a Restoration Report pursuant to Section 14.7.

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

(C) If Seller's Financing Documents do not require the use of insurance proceeds for 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 Buyers.

14.6 Restoration Consents. Notwithstanding anything herein to the contrary, Seller shall not be required to proceed with any Restoration unless and until it shall have received all necessary third-party consents and any Governmental Approvals required therewith. If Seller does not receive any such third-party consents or any Governmental Approvals required therewith for any reason (other than an act, omission or default of Seller) within one hundred eighty (180) Days after the date that it becomes obligated to proceed with such Restoration, then either Seller or Buyers shall have the right to terminate this PPA.

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

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

## **ARTICLE 15**

### **Representations, Warranties and Covenants**

15.1 Seller's Representations and Warranties. Seller hereby represents and warrants to Buyers 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 Buyers upon execution of this PPA);
- (ii) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;
- (iii) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or
- (iv) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA 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 Buyers, except as such enforceability may be limited by (i) public policy, (ii) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights, or (iii) general equitable principles.

(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 Buyers' Representations, Warranties, and Covenants. Each 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. (KU is also incorporated in Virginia.) Such Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

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

- (i) require any further consent or approval, including from such Buyer's Board of Directors;
- (ii) violate any Applicable Law, or violate any provision in any corporate documents of such Buyer, the violation of which could have a material adverse effect on the ability of such Buyer to perform its obligations under this PPA;

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

(C) The obligations of such Buyer under this PPA are valid and binding obligations of such Buyer, enforceable against it by the Seller, except as such enforceability may be limited by (i) public policy, (ii) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights, or (iii) general equitable principles.

(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 Buyers with one (1) copy of insurance certificates reasonably acceptable to Buyers evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit B and this Article 16. Such certificates shall provide a waiver of any rights of subrogation against Buyers and their Affiliates and their respective officers, directors, agents, subcontractors,

and employees; and shall contain such other endorsements and terms as required hereunder. All policies shall be written with insurers that Buyers, in their reasonable discretion, deem acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyers). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

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

16.3 Endorsements and Other Requirements.

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

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

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

**ARTICLE 17**  
**Indemnity**

17.1 Indemnification.

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

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

out of, or resulting from the negligence, fraud or willful misconduct of the Seller or its contractors, agents, servants or employees.

(C) Each Buyer, on a several but not joint basis, agrees, to the extent permitted by Applicable Law, to indemnify, pay, defend, and hold harmless Seller, its Affiliates, their respective officers, directors, employees, agents, and contractors (hereinafter called respectively, "Seller Entities") from and against any and all third party claims, demands, costs, or expenses for loss, damages for injury to persons or property directly caused by, arising out of, or resulting from the negligence, fraud or willful misconduct of such Buyer or its contractors, agents, servants or employees.

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

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

17.4 Defense of Claims.

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

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

(C) Neither the Indemnifying Party nor the Indemnified Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the

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

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

#### 17.5 Subrogation.

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

### **ARTICLE 18**

#### **Legal and Regulatory Compliance**

18.1 Applicable Laws. Seller shall promptly notify Buyer of any investigations, notices, or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection, or inquiry that has been commenced by any Governmental Authority in respect of a potential or possible violation of Applicable Law. 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 a Buyer to obtain Renewable Energy Benefits to comply with Applicable Law shall, in any such case, modify the obligations of the Parties hereunder.

## **ARTICLE 19**

### **Assignment and Other Transfer Restrictions**

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

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

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

## **ARTICLE 20**

### **Miscellaneous**

20.1 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

#### 20.2 Rate Changes.

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

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

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

#### 20.4 Relationship of the Parties.

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

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

20.5 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of

limitations, including warranties, remedies, or indemnities which obligation shall survive for the period of the applicable statute(s) of limitation.

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

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

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

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

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

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

20.12 Confidentiality.



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

(B) The Parties agree to and acknowledge that certain terms, conditions and provisions of this PPA will need to be disclosed in connection with Buyers’ satisfaction of the conditions set forth in Section 6.2, including seeking PSC approvals and with respect to seeking transmission service from the Interconnection Provider, and Buyers shall be permitted to make any necessary disclosures of Confidential Information in connection therewith (including any ongoing requirements), provided that Buyers shall use reasonable efforts to keep such disclosures confidential to the extent permitted. The Parties agree to and acknowledge that certain terms, conditions and provisions of this PPA will need to be disclosed in connection with Seller’s satisfaction of the conditions set forth in Section 6.1, including seeking approval from the Kentucky Public Service Commission Electric Generation and Transmission Siting Board and with respect to seeking transmission service, and Seller shall be permitted to make any necessary disclosures of Confidential Information in connection therewith (including any ongoing requirements), provided that Seller shall use reasonable efforts to keep such disclosures confidential to the extent permitted.

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

(D) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (F) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its affiliates and any of their directors, officers, employees, financial advisors, legal counsel, accountants, authorized agents of the Receiving Party identified in writing to the Disclosing Party, and current and potential investors 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.

20.15 Cure Rights of Financing Party; Cooperation with Financing. Buyers shall negotiate in good faith with any Financing Party as to the cure period(s) that will be allowed for any Financing Party to cure any Seller Event of Default. Buyer shall accept a cure of a Seller Event of Default performed by any Financing Party so long as the cure is accomplished within the cure period specified for such Event of Default in this Agreement or any additional applicable cure period so agreed to between Buyer and any Financing Party. Buyer shall execute, or arrange for the delivery of, such estoppels, certificates, consents, opinions and other documents as are customarily required of buyers in transactions similar to those contemplated in this PPA and may be reasonably necessary in order for Seller or its Affiliates to execute, consummate or make draws or receive funding under any Financing Document.

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**IN WITNESS WHEREOF**, the Parties have executed this PPA.

Seller:

**RAGL bn, LLC**

By:  DocuSigned by:  
6F88E0FAB07C481...


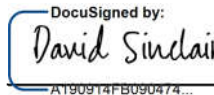
Name: Martin Hermann

Title: Chief Executive Officer

Date: 10/9/2021 | 12:36 PM EDT

Buyer:

**Louisville Gas and Electric Company**


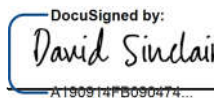
 By:  DocuSigned by:  
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Name: David S. Sinclair

Title: VP – Energy Supply & Analysis

Date: 10/11/2021 | 8:16 AM CDT

**Kentucky Utilities Company**

 By:  DocuSigned by:  
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Name: David S. Sinclair

Title: VP – Energy Supply & Analysis

Date: 10/11/2021 | 8:16 AM CDT

**EXHIBIT A**

**NOTICE ADDRESSES**

**To Seller:**

13123 E Emerald Coast Pkwy  
Suite B #158  
Inlet Beach FL 32461  
Email: [REDACTED]

**With a copy to:**

Nik Patel  
1399 New York Avenue, NW  
Suite 701  
Washington, DC 20005  
Telephone: [REDACTED]  
Email: [REDACTED]

**To Buyers:**

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

**With a copy to:**

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

## EXHIBIT B

### INSURANCE COVERAGES

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

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

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

**D. Excess Liability.** Excess Liability Insurance covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of five million Dollars (\$5,000,000).

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

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

## EXHIBIT C

### PRODUCTION MODEL VARIABLES AND METHODOLOGY

The "Production Model" shall be the energy production model prepared by Seller (and reasonably agreed to by Buyers 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. diffuse irradiance;
  - d. albedo irradiance;
  - e. weather conditions;
  - f. wind speed; and
- 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), 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 \_\_\_\_\_, 2021 by \_\_\_\_\_, a \_\_\_\_\_ corporation (“Guarantor”), in favor of **LOUISVILLE GAS AND ELECTRIC COMPANY**, a Kentucky corporation, and **KENTUCKY UTILITIES COMPANY**, both a Kentucky and a Virginia corporation, (collectively referred to as the “Beneficiary”).

#### RECITALS:

F. Guarantor is an affiliate of RAGL bn, LLC, a Delaware limited liability company (“Counterparty”).

G. Beneficiary and Counterparty are parties to that certain Power Purchase Agreement dated as of October 6, 2021 (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. Guarantor reserves and shall be entitled to any defenses, other than defenses arising in a bankruptcy in which Counterparty is a debtor, that the Counterparty has under the Agreement.

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

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

If to Guarantor, to: \_\_\_\_\_

If to Beneficiary, to: Louisville Gas and Electric Company/Kentucky Utilities Company  
220 West Main Street, 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: \_\_\_\_\_