

**POWER PURCHASE AGREEMENT
FOR
PECO ENERGY COMPANY**

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS AND INTERPRETATION	2
1.1 Definitions.....	2
1.2 Interpretation.....	10
ARTICLE 2 TERM OF AGREEMENT	11
2.1 Term.....	11
2.2 Early Termination	11
2.3 Impact of Termination on Accrued Obligations	12
ARTICLE 3 CONDITIONS PRECEDENT	12
3.1 Initial Delivery Date	12
ARTICLE 4 PURCHASE AND SALE OF PRODUCTS	13
4.1 Purchase and Sale Obligation	13
4.2 Quantity.....	13
4.3 Auction Specific Unforced Capacity.	13
4.4 Cleared Capacity Obligations.	13
4.5 Limitations on Seller’s Obligation to Sell	14
4.6 Limitations on Buyer’s Obligation to Buy.....	14
4.7 Origination of SPAECs.....	14
4.8 Change in PJM Capacity Market.	14
ARTICLE 5 SCHEDULING AND DELIVERY OF PRODUCTS	15
5.1 Delivery of Energy.....	15
5.2 Delivery of SPAECs	15
5.3 Transfer of Auction Specific Unforced Capacity.	15
5.4 Risk of Loss, Title and Ownership.	15
5.5 PJM E-Accounts	16
ARTICLE 6 SELLER COVENANTS.....	16
6.1 Construction, Progress Reports, and Facility Commercial Operation	16
6.2 Compliance with Law and Utility Requirements.....	16
6.3 Permits	17
6.4 Maintenance of Facility	17
6.5 Interconnection Agreement.....	17
6.6 Planned Outages.....	17
6.7 PJM Membership	17
6.8 Forecasts	17
6.9 Solar Photovoltaic Alternative Energy Source.	17
6.10 Compliance Reporting	17
6.11 Initial Delivery Date	18

6.12	Facility Guarantees	18
6.13	Facility Design and Costs	18
6.14	No Interference with Buyer's Products.....	18
6.15	Insurance	18
6.16	Facility Site Visits; Publicity	19
ARTICLE 7 METERING		19
7.1	Metering.....	19
7.2	Measurements	19
7.3	Testing and Calibration.....	19
7.4	Audit of Facility Meter.	19
7.5	Notice of Malfunction.....	20
7.6	Telemetry	20
ARTICLE 8 BILLING AND PAYMENT.....		20
8.1	Price for Energy, Capacity and SPAECs	20
8.2	Billing	20
8.3	Payment.....	20
8.4	Interest.....	20
8.5	Set-Off.....	21
8.6	Billing Disputes	21
8.7	PJM Accounting Procedures.....	21
ARTICLE 9 TAXES AND FEES.....		21
9.1	Taxes, Fees, and Expenses.....	21
ARTICLE 10 CREDIT AND SECURITY		22
10.1	Credit Support.....	22
10.2	Grant of Security Interest.....	22
10.3	Remedies.....	22
10.4	Forms of Performance Assurance.....	22
10.5	Calling on Security	23
10.6	No Limit of Liability.....	23
ARTICLE 11 REPRESENTATIONS AND WARRANTIES.....		23
11.1	Representations and Warranties of Both Parties.....	23
11.2	Forward Contract	25
11.3	Disclaimer of Implied Warranties.....	25
ARTICLE 12 ASSIGNMENT		25
12.1	Assignment; Change in Control.....	25
ARTICLE 13 FORCE MAJEURE		25
13.1	Force Majeure	25
13.2	Notice.....	25
13.3	No Extension of Term.....	26
ARTICLE 14 EVENTS OF DEFAULT; REMEDIES		26

14.1	Events of Default	26
14.2	Additional Seller Events of Default	27
14.3	General Remedies	27
14.4	Delay Damages	27
14.5	Damages on Termination	28
14.6	Right of First Offer	29
14.7	Facility Lender's Right to Cure	29
14.8	Exclusion of Consequential Damages	29
14.9	Liquidated Damages	29
ARTICLE 15 INDEMNIFICATION		30
15.1	Indemnification Obligation	30
15.2	Scope of Indemnification	30
15.3	Notice	30
ARTICLE 16 CONFIDENTIALITY		30
16.1	Confidentiality	30
16.2	Required Disclosure	30
16.3	Tax Treatment Exception	31
16.4	Survival	31
ARTICLE 17 DISPUTE RESOLUTION		31
17.1	Informal Dispute Resolution	31
17.2	Formal Dispute Resolution	31
ARTICLE 18 MISCELLANEOUS		31
18.1	Entire Agreement	31
18.2	Severability	31
18.3	Waiver	31
18.4	Notices	31
18.5	Governing Law	32
18.6	Jurisdiction and Venue	32
18.7	Compliance with Laws	32
18.8	Remedies Cumulative	32
18.9	Binding Effect; Limitation of Benefits	32
18.10	No Partnership or Joint Venture	32
18.11	Audit	32
18.12	Records	33
18.13	Survival	33
18.14	Counterparts	33

EXHIBITS:

Exhibit A	Facility Description
Exhibit B	Milestone Schedule
Exhibit C	Availability Calculations

PECO Solar RFP
01 APR 2025

Exhibit D	Contract Terms
Exhibit E	Form of Guaranty Agreement
Exhibit F	Letter of Credit Documentation
Exhibit G	Performance Assurance Amount
Exhibit H	Notice Information

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (“Agreement”), made and entered into as of [] (“Effective Date”), by and between PECO Energy Company (“Buyer”), a Pennsylvania public utility company organized and existing under the laws of the Commonwealth of Pennsylvania, and [], a [] corporation (“Seller”). Buyer and Seller hereinafter are also sometimes referred to collectively as the “Parties”, or individually as a “Party”.

WITNESSETH:

WHEREAS, under the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801 et seq. (the “Competition Act” as amended from time to time), and under the Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1 et seq. (the “AEPS Act” as amended from time to time), Buyer is an electric distribution company engaged, *inter alia*, in providing retail electric service within its service territory located within the Commonwealth of Pennsylvania; and

WHEREAS, Buyer has conducted and completed a successful competitive bidding process for the procurement of Energy, Capacity and Solar Photovoltaic Alternative Energy Credits (“SPAECs”) in which Seller was a successful bidder; and

WHEREAS, Seller plans to own and operate a solar energy generating Facility with an aggregate total nameplate capacity rating of [] MW (the “Facility Nameplate Rating”) located in [], Pennsylvania; and

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive, Energy, Capacity and SPAECs generated by, or associated with, the Facility (collectively, the “Products”) in order to satisfy Buyer’s obligations under the Competition Act and AEPS Act, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions. As used in this Agreement, the following terms have the respective meanings set forth below. Other capitalized terms not set forth in this section are defined elsewhere in this Agreement or have the meaning ascribed to them by the Competition or the AEPS Act.

AEPS Act or Alternative Energy Portfolio Standards Act has the meaning set forth in the Recitals, and, among other things, requires Buyer to obtain alternative energy credits corresponding to electricity generated from Solar Photovoltaic Alternative Energy Sources equal to a stipulated percentage of the total electric energy sold by Buyer.

Affiliate means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

Agreement means all of the provisions, the exhibits incorporated as part of this Agreement, and any other documents incorporated by reference.

Alternative Energy Credit or “AEC” has the meaning ascribed to such term in the AEPS Act.

Alternative Energy Portfolio Standards or “AEPS” means those standards established by the AEPS Act requiring that a certain amount of electric energy sold from alternative energy sources is to be included as part of the sources of electric generation by electric utilities within the Commonwealth of Pennsylvania in accordance with the AEPS Act as it may be amended from time to time.

Alternative Energy Source has the meaning ascribed to such term in the AEPS Act, and includes sources for the production of solar photovoltaic or other solar electric energy.

Annual Capacity Quantity means [] MW per day times the “Effective Load Carrying Capability” as defined by PJM applicable to the Facility.

Annual Notional Value has the meaning set forth in Exhibit G.

Applicable Resource Clearing Price means the clearing price for the PECO Locational Deliverability Area as defined by PJM for the applicable Delivery Year (June 1 through May 31).

Auction Specific Unforced Capacity means a type of bilateral transaction in PJM’s Capacity Exchange, which will be used to transfer Capacity that has cleared an RPM Auction from Seller to Buyer at PECO’s Locational Deliverability Area in accordance with the PJM Tariff and PJM Manual 18.

Bankruptcy Code means those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 1101 et seq.

Base Residual Auction means the annual RPM Auction conducted by PJM to procure capacity resources for a future Delivery Year designated by PJM.

Business Day means a day on which Federal Reserve member banks in New York City are open for business. For purposes of this Agreement, a Business Day shall open or begin at 8:00 a.m. and shall close or end at 5:00 p.m. Eastern Prevailing Time (“EPT”).

Buyer has the meaning set forth in the preamble hereto.

Buyer’s Percentage means [] percent [(•)] of the Facility Nameplate Rating, which shall not be less than five (5) MW.

Capacity shall mean the generating capacity of the Facility eligible for participation in the capacity markets operated by PJM under the PJM Agreements.

Capacity Exchange means PJM’s Capacity Exchange tool.

Capacity Payment Rate means the price per MWh set forth in Exhibit D.

Capacity Product Days means 365 days (or 366) in a leap year.

Capacity Shortfall Payment means an amount equal to the product of (a) Annual Capacity Quantity, (b) Applicable Resource Clearing Price, and (c) Capacity Product Days.

Change in Control means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in Seller. Notwithstanding the foregoing, the following shall not constitute a Change in Control: (a) any time in which Seller retains a Qualified Operator to operate the Facility, (b) any transaction after which Seller’s Ultimate Parent, or their Affiliate, is a Qualified Operator, (c) the sale of any equity interest, directly or indirectly, in the Ultimate Parent, or the sale of any equity interest in any entity that owns, directly or indirectly, legally or beneficially an equity interest in Ultimate Parent, or (d) the sale of any indirect equity interest in Seller in connection with a tax equity or cash equity financing of the Facility; *provided*, that Seller or its Affiliate maintains day-to-day operational management rights to the Facility.

Change in Law means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable Law; (ii) the imposition of any material conditions on the issuance or renewal of any applicable Permit after the Effective Date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority, or (iv) revocation of any tax credit, which establishes requirements or revokes beneficial laws or rules affecting owning, supplying, constructing, installing, operating, or maintaining the Facility, or other

performance of Seller's obligations hereunder, which has a material adverse effect on the cost to Seller of maintaining such obligations.

Cleared Capacity means a cleared sell offer in an RPM Auction that represents a binding commitment to provide capacity for the relevant Delivery Year.

Commission means the Pennsylvania Public Utility Commission.

Commodities Exchange Act means the Commodities Exchange Act as amended and codified at 7 U.S.C. § 1 et seq.

Competition Act has the meaning set forth in the Recitals

Confidential Information means all oral and written information exchanged between the Parties which is not otherwise available to the public with respect to the subject matter of this Agreement except (a) information that is or becomes available to the public other than as a result of a disclosure by either Party on a non-confidential basis prior to this Agreement; (b) information that was already known by either Party on a non-confidential basis prior to this Agreement; and (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not, to the best of the receiving party's knowledge, information, and belief, subject to any prohibition against disclosing the information to such Party.

Contract Price means the price per MWh of Energy delivered to the Delivery Point for Buyer's account, Auction Specific Unforced Capacity or Replacement Capacity transferred to Buyer, and SPAECs delivered to Buyer, as set forth in Exhibit D.

Contract Term has the meaning set forth in Section 2.1.

Contract Year shall mean the twelve (12) month period commencing on the Initial Delivery Date and each anniversary thereafter during the Services Term.

COVID-19 means the global pandemic associated with the outbreak of the disease designated as COVID-19 as declared by the World Health Organization on March 11, 2020, and the actions of any Governmental Authority directly related thereto.

Credit Rating means, with respect to any Person, the rating then assigned to such Person's senior unsecured long-term debt obligations (not supported by third-party credit enhancements) by a Rating Agency or, if such Person does not have a rating for its senior unsecured long-term debt, then the "Issuer Credit Rating" for such Person established by a Rating Agency.

Delay Damages has the meaning set forth in Section 14.4.

Delivery Point means the PECO zone, as defined by PJM.

Effective Date has the meaning set forth in the preamble hereto.

Electrical Interconnection Facilities means the equipment and facilities required to safely and reliably interconnect the Facility to the PJM Transmission System or the transmission system of

another Transmitting Utility in whose territory the Facility is located, as applicable, including transformers and all switching, metering, communications, control and safety equipment, and the facilities described in Exhibit A.

Emergency means: (a) an abnormal system condition requiring manual or automatic action to maintain system frequency or voltage or to prevent loss of firm load, equipment damage or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; (b) system recovery from an abnormal condition that resulted in loss of firm load or equipment damage; or (c) a condition that requires implementation of “emergency procedures” (as defined by PJM or any Transmitting Utility).

Energy means three-phase, 60-cycle alternating current electric energy.

Event of Default has the meaning set forth in Sections 14.1 and 14.2.

Facility means the solar-energy generating facility, including the Electrical Interconnection Facilities and any other ancillary facilities and equipment, as more particularly described in Exhibit A.

Facility Commercial Operation means the condition of the Facility once it has achieved the following:

- (a) ninety percent (90%) of the Facility Nameplate Rating shall have been fully commissioned and shall be operational;
- (b) all performance testing of the Electrical Interconnection Facilities shall have been successfully completed in accordance with the PJM Agreements;
- (c) the Facility shall be operating and able to produce and deliver Energy to the Interconnection Point: (i) pursuant to the terms of this Agreement, the Interconnection Agreement, and all applicable Laws; and (ii) in accordance with Good Utility Practice; and
- (d) the SCADA system for the Facility shall have been installed and tested and is fully operational.

Facility Commercial Operation Date means the first date as of which: (a) Facility Commercial Operation has occurred; and (b) Seller shall have delivered to Buyer written certification of an authorized officer of Seller certifying that the Facility has achieved Facility Commercial Operation, which shall incorporate a certification of Facility Commercial Operation by a third party independent engineer experienced with such certifications for projects similar to the Facility and made as of the Facility Commercial Operation Date.

Facility Lender means any Person(s), other than Affiliates of Seller, that provide construction, working capital, or term debt financing for the Facility (including any agent(s) or Affiliates thereof).

Facility Meter means the revenue quality electricity generation meter, to be located at the metering point shown on Exhibit A, used to register all Energy produced by the Facility and delivered to the Interconnection Point.

Facility Nameplate Rating has the meaning set forth in the Recitals hereto.

Facility Site means the property on which the Facility is located, as more particularly described in Exhibit A.

Fitch means Fitch Investor Service, Inc.

FERC means the Federal Energy Regulatory Commission.

Financing Assignment shall mean the consent to collateral assignment between Buyer, Seller, and Facility Lender, in a form reasonably satisfactory to Buyer, Seller, and any and all Facility Lenders.

Force Majeure means an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party affected thereby or attributable to such Party's fault or negligence, and which by the exercise of due diligence the affected Party is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefore. Force Majeure can include, but is not limited to: acts of God, civil disturbance, sabotage, epidemic or pandemic (including COVID-19, but only as to future impacts that were not foreseeable as of the Effective Date), action or restraint by court order or public or government authority, so long as the affected Party has not applied for, or assisted in, the application for, and has opposed, where and to the extent reasonable, such government action. Notwithstanding the foregoing, under no circumstance shall a Force Majeure Event be based on: (i) a Change in Law that alters either Party's costs in connection with this Agreement, operation of the Facility, or the value of the Products delivered under this Agreement or affects in any other material way the purpose or economics of this Agreement; (ii) Seller's ability to sell a Product at a price greater than that received under the terms of this Agreement; (iii) Buyer's ability to purchase a Product at a price lower than paid under the terms of this Agreement; (iv) delays or nonperformance by suppliers, vendors or other third parties with whom a Party has contracted, unless such delay or nonperformance is itself caused by a Force Majeure Event; and (v) any other economic hardship or changes in market conditions affecting the economics of one of the Parties but not the other.

Forward Contract has the meaning ascribed to such term in Section 101(25) of the Bankruptcy Code.

Forward Contract Merchant has the meaning ascribed to such term in Section 101(26) of the Bankruptcy Code.

GATS Operating Rules means the operating rules for the GATS (including successor versions), as published by PJM Environmental Information Services, Inc.

Generator Attribute Tracking System or **GATS** means the system (or its successor) operated by PJM Environmental Information Services, Inc. in accordance with the GATS

Operating Rules to provide environmental and emissions attributes reporting and tracking services to its subscribers.

Good Utility Practice means the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry (in the case of Buyer) or the solar industry (in the case of Seller) during the relevant time period, and any of the practices, methods, and acts 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 business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.

Governmental Authority means the federal government, any state or local government or other political subdivision thereof (whether federal, state, or local), any court and any administrative agency or other regulatory body, instrumentality, authority, or entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government.

Guaranteed Availability Percentage has the meaning set forth in Exhibit C.

Guaranteed Initial Delivery Date means the date set forth in Exhibit D; *provided, however*, that the Guaranteed Initial Delivery Date shall be extended on a day-for-day basis for up to six (6) months to the extent that the Initial Delivery Date is delayed as a result of a Force Majeure Event.

Guarantor means any Person that: (a) guarantees Seller's financial obligations under this Agreement pursuant to a Guaranty; (b) is an Affiliate of Seller; (c) has a Credit Rating from a Rating Agency; (d) has no Credit Rating from any Rating Agency less than the Minimum Acceptable Credit Rating; and (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction.

Guaranty means a Guaranty Agreement in favor of Buyer, delivered by a Guarantor to Buyer, in the form of Exhibit E.

Initial Delivery Date means the date as defined in Section 3.1.

Initial RPM Auction has the meaning set forth in Section 4.3.

Interconnection Agreement means an agreement between Seller and the Transmitting Utility (which may be Buyer or an Affiliate of Buyer) in whose territory the Facility is located regarding interconnection of the Facility to the transmission system of the Transmitting Utility.

Interconnection Point means the physical point of interconnection between the Electrical Interconnection Facilities and the electrical transmission system of the Transmitting Utility.

Instructed Operation means a mandatory direction by a Transmitting Utility to meet an Emergency or a transmission system reliability need, including, but not limited to, voltage support.

Interest Rate means a per annum rate of interest equal to two (2%) percent over the prime lending rate as published from time to time in the Wall Street Journal under “Money Rates” on the date on which any payment or delivery obligation is due (or if not published on such day on the most recent preceding day on which it is published), but in no event to exceed the maximum lawful rate.

Internal Bilateral Transfer has the meaning given to such term in the PJM Agreements.

Investment Grade shall mean any of the following three Credit Ratings: “BBB-” or better from S&P, “BBB-” or better from Fitch, or “Baa3” or better from Moody’s.

kW means kilowatt.

Law means any statute, law, treaty, convention, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree, or other legal or regulatory determination or restriction issued, adopted, administered, or implemented by a court or Governmental Authority, including any of the foregoing that are enacted, amended, or issued after the Effective Date, and any binding interpretations of any of the foregoing.

Letter of Credit means an irrevocable standby letter of credit in favor of Buyer issued by a Qualified Institution, in the form of Exhibit F or such other form as may reasonably be agreed by the Parties.

Lien means any encumbrance of any nature, including (but not limited to) any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right-of-way, restriction, equity interest, and conditional sales agreement.

Market Participant has the meaning set forth in the PJM Operating Agreement.

Market Price means the market price determined based on the average of prices quoted by three (3) reputable, independent third-party leading market dealers, which are regularly engaged in the buying and selling of AECs and SPAECs.

Milestone Schedule has the meaning set forth in Section 6.1.

Minimum Acceptable Credit Rating means a Credit Rating equal to or better than (a) “BBB-” by S&P; (b) “BBB-” by Moody’s; or (c) “Baa3” by Fitch.

Moody’s means Moody’s Investor Services, Inc.

MW means megawatt.

MWh means megawatt-hour.

NERC means the North American Electric Reliability Council, or any other Person designated by FERC to perform its functions.

Notice to Proceed means Seller's execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a notice to proceed that authorizes the contractor to begin physical construction of the Facility.

Performance Assurance means collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Buyer, in each case in accordance with Article 10 unless otherwise approved by Buyer.

Performance Assurance Amount has the meaning set forth in Exhibit G.

Permit means any permit, authorization, license, order, consent, waiver, exception, exemption, variance, or other approval by or from, and any filing, report, certification, declaration, notice, or submission to or with, any Governmental Authority required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use, or maintenance of the Facility under any applicable Law.

Person means an individual, partnership, joint venture, corporation, limited liability company, trust, association, unincorporated organization, or Governmental Authority.

PJM means PJM Interconnection, L.L.C., a regional transmission organization that coordinates and directs the operation and ensures reliability of the high-voltage electric power system service for all or parts of the territory consisting of the states of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.

PJM Agreements means the PJM Tariff, the PJM Operating Agreement, and any other applicable PJM bylaws, procedures, manuals or documents.

PJM Member means any entity satisfying the requirements of PJM to conduct business with PJM.

PJM Operating Agreement means the Operating Agreement of PJM.

PJM Tariff means the Open Access Transmission Tariff of PJM.

PJM Transmission System means the system of transmission lines and associated facilities that have been placed under PJM's operational control.

Products has the meaning set forth in the Recitals hereto; provided, however, that the Products do not include Project Benefits or any item that would otherwise be an environmental benefit or attribute under this definition that is not required for use of the SPAEC for compliance with the AEPS Act.

Project Benefits means production tax credits, investment tax credits, or other direct, third-party federal, state, or local subsidies, incentives, grants, credits, rebates, or funding for the purchase, ownership, construction, or operation of a Facility, or the generation of electricity or production of Alternative Energy Credits by a Facility.

Qualified Institution means a U.S. commercial bank (or a foreign bank with a U.S. branch) having total assets of at least \$10 billion dollars (\$10,000,000,000.00) and a Credit Rating equal to or better than “A-” by S&P and an equivalent Credit Rating by Moody’s or Fitch.

Qualified Operator means an entity that, together with its Affiliates, owns or operates renewable electricity generating assets that have a nameplate capacity of not less than 500 MW in the aggregate in the United States (excluding the Facility).

Rating Agency or **Rating Agencies** shall mean, individually or collectively, S&P, Moody’s, and Fitch.

Regional Reliability Entity means the organization designated by NERC responsible for establishing and implementing reliability criteria and protocols for the Facility.

Reliability Pricing Model Auction shall have the meaning set forth in in the PJM Tariff.

Replacement Capacity means Capacity, made available by Seller to Buyer in accordance with this Agreement.

S&P means Standard & Poor’s Ratings Group, a division of McGraw Hill, Inc.

Services Term means the period commencing on the Initial Delivery Date and ending ten (10) years thereafter.

Solar Photovoltaic Alternative Energy Credit or “**SPAEC**” means an Alternative Energy Credit corresponding to the production of solar photovoltaic electricity as set forth in the AEPS Act.

Solar Photovoltaic Alternative Energy Source means a source for the production of solar photovoltaic electricity as set forth in the AEPS Act.

Taxes means, but is not limited to, any or all ad valorem, property, occupation, severance, first use, conservation, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits, and assessments, or increases therein, other than taxes based on net income or net worth. A tax is not a penalty or a fine.

Total Notional Value has the meaning set forth in Exhibit G.

Transmitting Utility means any utility (including its control area operator) that transmits Energy from the Interconnection Point to the Delivery Point.

Ultimate Parent means the entity identified as “Seller Ultimate Parent” on Exhibit A or its successor.

1.2 Interpretation. Unless otherwise indicated (a) defined terms include the plural as well as the singular; (b) any agreement defined or referred to herein includes each amendment, modification and supplement thereto and waiver, approval and consent in respect thereof as may become effective from time to time and includes references to all appendices, exhibits, schedules

and other attachments thereto and instruments, agreements, or other documents incorporated therein; (c) any term defined by reference to any instrument, agreement, or other document has such meaning set forth in such document as of the date hereof and such meaning shall remain in effect whether or not such document is subsequently amended, modified, or terminated; (d) a reference to any law or regulations includes any amendment, modification, or successor thereto; (e) a reference to any Person includes its permitted successors and assigns; (f) all references to appendices, sections, schedules, and exhibits shall mean and refer to the respective appendices, sections, schedules, and exhibits in or attached to the agreement or document in which such reference appears; (g) the words “include,” “includes” and “including” are not limiting and shall be deemed to be followed by the words “without limitation” whether or not in fact followed by such words or words of like import; (h) the terms “hereof,” “herein,” “hereunder” and comparable terms refer to this entire Agreement with respect to which such terms are used and not to any particular article, Section, or subdivision hereof; and (i) references to “termination of this Agreement,” “this Agreement is terminated,” “this Agreement may be terminated,” and similar expressions used in this Agreement refer to the termination of deliveries under this Agreement and related on-going rights and obligations, and does not imply or mean a termination of rights, remedies, obligations and provisions, which by their nature, or as provided elsewhere in this Agreement, survive termination.

ARTICLE 2

TERM OF AGREEMENT

2.1 Term. The term of this Agreement (“Contract Term”) will commence upon the Effective Date and, unless earlier terminated pursuant to the express provisions of this Agreement, will continue until the end of the Services Term; provided, however, that all provisions of this Agreement which must, in order to give full force and effect to the rights and obligations of the Parties, survive termination or expiration of this Agreement, shall so survive, including any such rights and obligations set forth in Articles 14, 15, 16 and 17.

2.2 Early Termination. This Agreement may be terminated prior to the end of the Services Term as follows:

- (a) At any time by the mutual consent of the Parties;
- (b) As provided and in accordance with the provisions Article 14, by the Non-Defaulting Party if an Event of Default as defined thereunder occurs;
- (c) By either Party if any delay or failure of performance caused by a Force Majeure event continues for an uninterrupted period of one hundred eighty (180) days or longer and upon not less than thirty (30) days’ advance written notice from the non-claiming Party, without liability to the other Party except as provided in Section 2.3;
- (d) By Buyer, if Seller has not issued a Notice to Proceed by the date that is eighteen (18) months prior to the Initial Delivery Date, whereupon Buyer shall be entitled to collect or retain fifty percent (50%) of the Performance

Assurance Amount and shall not otherwise be entitled to damages under this Agreement.

2.3 Impact of Termination on Accrued Obligations. Termination of this Agreement for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination.

ARTICLE 3 CONDITIONS PRECEDENT

3.1 Initial Delivery Date. The Initial Delivery Date shall occur upon the satisfaction or waiver in writing by Buyer of the following conditions precedent:

- (a) the Facility Commercial Operation Date shall have occurred or will occur simultaneously with the Initial Delivery Date;
- (b) Seller shall have obtained (and demonstrated possession of) all Permits required to commence delivery of Energy from the Facility and satisfy the conditions of Facility Commercial Operation, other than those that would not have a material adverse effect on Seller's ability to perform its obligations under this Agreement;
- (c) no Seller Event of Default shall be occurring;
- (d) Seller shall be a PJM Member and shall have entered into all required PJM Agreements required for the performance of Seller's obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect or Seller shall have entered into an agreement with a Market Participant that will perform all of Seller's PJM-related obligations in connection with the Facility and this Agreement;
- (e) the Facility shall have been qualified and certified by the Commission as a Solar Photovoltaic Alternative Energy Source;
- (f) Seller shall have made all filings and applications required for accreditation of the Facility in GATS and for the registration, origination, and transfer of SPAECs from the Facility that are eligible for origination, registration, and transfer under GATS;
- (g) Seller shall have entered into all agreements and made all filings and other arrangements necessary for the transmission and delivery of the Energy associated with Buyer's Percentage of the Facility from the Facility to the Delivery Point;
- (h) Seller shall have obtained all necessary authorizations from FERC to sell Energy at market-based rates as contemplated by this Agreement and shall be in compliance with such authorization;

- (i) Seller shall have delivered a Guaranty or other required Performance Assurance, if and as required pursuant to Article 10 herein;
- (j) Seller shall have obtained all rights to the Facility Site necessary for performance of its obligations under the Agreement for the Services Term;
- (k) Seller shall have provided Buyer with written evidence that all of the preceding conditions have been satisfied.

ARTICLE 4 PURCHASE AND SALE OF PRODUCTS

4.1 Purchase and Sale Obligation. Subject to Seller's rights pursuant to Sections 4.5 and 4.6, during the Services Term Seller shall: (a) deliver and sell Buyer's Percentage of all Products produced by, or associated with, the Facility to Buyer; and (b) not offer, deliver, sell, or make available to any Person other than Buyer, Buyer's Percentage of all Products produced by, or associated with, the Facility. Subject to the rights of the Parties pursuant to Sections 4.5 and 4.6, during the Services Term Buyer shall: (i) have the exclusive right to purchase and receive Buyer's Percentage of all Products produced by, or associated with, the Facility; and (ii) accept and purchase Buyer's Percentage of all Products produced by, or associated with, the Facility and delivered to Buyer in accordance with the terms and conditions of this Agreement.

4.2 Quantity of Energy and SPAECs. The quantity of Energy required to be delivered by Seller to Buyer shall be equal to Buyer's Percentage of the Energy produced by the Facility, as recognized by PJM at the Interconnection Point. The quantity of SPAECs required to be delivered by Seller to Buyer shall be equal to Buyer's Percentage of the Energy produced by the Facility. For the avoidance of doubt, Energy that may be stored by Seller in any device capable of storing Energy will not be part of the Products until the Energy is delivered to Buyer at the Delivery Point.

4.3 Auction Specific Unforced Capacity. Seller shall provide to Buyer Auction Specific Unforced Capacity during each Delivery Year in the Term pursuant to Section 5.3. Seller shall use reasonable commercial judgment in developing an offer strategy that maximizes the amount of offered capacity. Seller will not be obligated to participate in any RPM Auction until the first RPM Auction that occurs after the Guaranteed Initial Delivery Date ("Initial RPM Auction") and will not be obligated to provide any Auction Specific Unforced Capacity until after completion of the Initial RPM Auction.

4.4 Cleared Capacity Obligations. Seller shall provide Buyer Auction Specific Unforced Capacity or Replacement Capacity equal to the Annual Capacity Quantity in the aggregate for each period in the Term covered by an RPM Auction, following the Initial RPM, in which Seller is obligated to participate. To the extent that the Facility has Cleared Capacity and under or over performs, as determined by PJM, and is assessed a penalty or credit by PJM, such penalty or credit will be allocated to Seller in accordance with the PJM Agreements. If the Facility has Cleared Capacity and underperforms and PJM assesses any penalty to Buyer, Buyer shall deliver to Seller an invoice ("Invoice") that sets forth the amount of any such penalty and includes supporting documentation reasonably necessary to determine how the Invoice amounts are

calculated. Seller shall pay to Buyer the total amount due within fifteen (15) days of Seller's receipt of an Invoice issued by Buyer under this Section 4.4. For avoidance of doubt, Seller's failure to make, when due, any undisputed Invoice payment required to be made pursuant to this Section 4.4, shall constitute an Event of Default under Section 14.1(a). If Buyer receives any credit for Cleared Capacity, Buyer shall arrange to transfer the monetary value of any such credit to Seller. If Seller fails **to obtain** Cleared Capacity associated with the Facility in an amount equal to the Annual Capacity in any PJM Base Residual Auction, Seller must provide Replacement Capacity to Buyer in an amount equal to difference between (a) the Annual Capacity Quantity and (b) the Cleared Capacity. If Seller cannot buy Replacement Capacity, Seller will pay Buyer liquidated damages in an amount equal to the Capacity Shortfall Payment. Seller, in its sole discretion, shall decide how to participate in the RPM Auctions with respect to offer quantity and offer price. Buyer's sole remedy and Seller's sole liability for the failure of Seller or the Facility to obtain Cleared Capacity and to deliver Auction Specific Unforced Capacity or Replacement Capacity to Buyer shall be the provision of Replacement Capacity or the payment by Seller of the Capacity Shortfall Payment, as specified in this Section 4.4.

4.5 Limitations on Seller's Obligation to Sell Energy. Notwithstanding anything to the contrary set forth herein, Seller may sell any or all Energy produced by the Facility to Persons other than Buyer to the extent it is unable to deliver Buyer's Percentage of such Energy to the Delivery Point due to a Force Majeure Event or an Instructed Operation; provided, however, that during any such period, Seller shall remain obligated to deliver and sell Buyer's Percentage of SPAECs produced by or associated with the Facility to Buyer. For purposes of this provision, Buyer shall purchase the SPAECs at a price determined by taking the average of two price quotes for comparable SPAECs with the same vintage generated by a solar energy generating facility in Pennsylvania, with each such price quote to be obtained from a nationally recognized broker (with one broker selected by Seller and the other broker selected by Buyer).

4.6 Limitations on Buyer's Obligation to Buy. Notwithstanding anything to the contrary set forth in this Agreement: (a) Buyer shall not be obligated to accept delivery of any Energy from Seller under this Agreement to the extent it is unable to do so due to a Force Majeure Event or an Instructed Operation; (b) Buyer shall have no obligation to purchase any Energy, Capacity or SPAECs generated by, or associated with, the Facility prior to the Initial Delivery Date; (c) Buyer is purchasing only Energy, Capacity and SPAECs from the Facility, and is not purchasing ancillary services, or any other product of the Facility, which shall remain the property of Seller; and (d) Buyer's obligation to make purchases of Energy pursuant to this Agreement is expressly conditioned on the delivery and sale by Seller, in accordance with the terms of this Agreement, of SPAECs in an amount corresponding to the Energy from the Facility delivered by Seller.

4.7 Origination of SPAECs. SPAECs provided by Seller to Buyer hereunder shall be required to originate from Energy produced by the Facility.

4.8 Change in PJM Capacity Market. Notwithstanding the foregoing provisions of this Article 4, if any Change in Law or change in the PJM Tariff or capacity rules adversely impacts Seller's ability to deliver or costs in delivering the Auction Specific Unforced Capacity from the Facility as contemplated by this Article 4 (a "PJM Capacity Market Change"), including as a result of reduced Capacity Interconnection Rights (as defined by the PJM Tariff) for solar facilities or

changes to PJM's minimum offer price rule (as set forth in the PJM Tariff) or otherwise, then, upon request of Seller, the Parties shall negotiate in good faith to amend the terms of this Agreement such that the Parties are, to the extent possible, put back in the same relative economic circumstances as existed prior to such PJM Capacity Market Change.

ARTICLE 5

SCHEDULING AND DELIVERY OF PRODUCTS

5.1 Delivery of Energy. Seller shall be solely responsible for arranging, scheduling with PJM and other Transmitting Utilities, and delivering Energy from the Facility to be delivered hereunder to the Delivery Point. As between the Parties, Seller shall be solely responsible for any and all costs and charges (including penalties) incurred in connection therewith, whether imposed pursuant to standards or provisions established by FERC, any other Governmental Authority or any Transmitting Utility, including transmission costs, scheduling costs, imbalance costs, congestion costs, operating reserve charges (day-ahead and balancing), any losses between the Interconnection Point and the Delivery Point, and the cost of firm transmission rights. Buyer shall arrange, schedule with PJM and be responsible for transmission of Energy from the Delivery Point and shall, as between the Parties, be solely responsible for any and all costs and charges (including penalties) incurred in connection therewith, whether imposed pursuant to standards or provisions established by FERC, any other Governmental Authority or PJM, including transmission costs, scheduling costs, imbalance costs, congestion costs, and the cost of firm transmission rights.

5.2 Delivery of SPAECs. Seller shall: (a) take all actions necessary to register, certify, and transfer SPAECs from Seller to Buyer in accordance with GATS and applicable Law; and (b) bear all costs associated therewith, including program fees and registration fees. Seller shall comply with the AEPS Act in connection with Seller's transfer of SPAECs to Buyer hereunder.

5.3 Transfer of Auction Specific Unforced Capacity. With respect to Auction Specific Unforced Capacity delivered to Buyer under the terms of this Agreement, Seller will initiate Auction Specific MW Transactions (as such term is defined in the PJM Agreements) in Capacity Exchange following the completion of the RPM Auction to which the transaction applies. Such transaction must specify buyer, seller, start and end dates, resource, auction type (Base Residual, Incremental) and Capacity Performance offer segment type (Annual or Season-Summer), and must be confirmed by Buyer and Seller in accordance with the PJM Agreements.

5.4 Risk of Loss, Title and Ownership.

5.4.1 Title to, and risk of loss (including risks and costs associated with any transmission outages or curtailment up to and at the Delivery Point) related to Energy sold by Seller to Buyer pursuant to this Agreement shall pass and transfer from Seller to Buyer upon delivery thereof for Buyer's account at the Delivery Point. Seller covenants that it shall have good and marketable title to all Energy delivered to Buyer at the Delivery Point and that it has the right to, and will, sell and deliver such Energy to Buyer free and clear of all Liens.

- 5.4.2 Title to, and risk of loss related to, SPAECs sold by Seller to Buyer pursuant to this Agreement shall pass and transfer from Seller to Buyer upon the completion of the recordation of transfer and physical or electronic delivery of such SPAECs to Buyer in definitive form in accordance with GATS Operating Rules or other applicable Law. Seller shall transfer certificates into Buyer's GATS account(s) as necessary to transfer SPAECs to Buyer under GATS. Seller covenants that it shall have good and marketable title to all SPAECs delivered to Buyer and that it has the right to, and will, sell and deliver such SPAECs to Buyer free and clear of all Liens. Buyer shall have sole, exclusive and perpetual ownership of all SPAECs delivered to Buyer by Seller under this Agreement, including all rights to sell, assign, transfer, apply, or retire any SPAEC delivered to Buyer by Seller.

5.5 PJM E-Accounts. Each of Buyer and Seller shall establish and maintain for the duration of the Services Term, separate PJM accounts for Seller to provide and Buyer to receive Products. PJM's Internal Bilateral Transfer mechanism, or successor, will settle the physical delivery of Energy between Seller and Buyer.

ARTICLE 6 SELLER COVENANTS

6.1 Construction, Progress Reports, and Facility Commercial Operation. Seller shall construct the Facility in accordance with the specifications set forth in Exhibit A. The non-binding milestone schedule for development, construction, and completion of the Facility anticipated as of the Effective Date is set forth in Exhibit B (the "Milestone Schedule"). Seller shall prepare and submit to Buyer written progress reports, in a form reasonably satisfactory to Buyer, describing the status of development and construction of the Facility and all milestones, including the status of each of the conditions precedent to the Initial Delivery Date set forth in Section 3.1 and an explanation of any delays or changes to the development and construction schedule. Such progress reports shall be submitted: (a) on a monthly basis commencing on the Execution Date; and (b) on a weekly basis commencing forty-five (45) days prior to Seller's anticipated Initial Delivery Date. In addition to such progress reports, Seller shall promptly provide to Buyer any written reports regarding the status of development of the Facility that are delivered to Facility Lenders or their representatives.

6.2 Compliance with Law and Utility Requirements. Seller shall comply with, and cause the Facility to comply with: (a) Good Utility Practice; (b) all applicable requirements of Law; and (c) all applicable rules, procedures, operating policies, criteria, guidelines, and requirements imposed by the Commission, any other Governmental Authority, any Transmitting Utility, NERC and/or any Regional Reliability Entity, including, in each case, all practices, requirements, rules, procedures, and standards related to Seller's construction, ownership, operation, and maintenance of the Facility and its performance of its obligations under this Agreement (including obligations related to the generation, scheduling, and transmission of Energy), whether such requirements were imposed prior to or after the Effective Date. Seller shall be solely responsible for registering as the "Generator Operator" of the Facility with NERC and any applicable Regional Reliability Entity.

6.3 Permits. Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under this Agreement, including all Permits necessary to operate and maintain the Facility.

6.4 Maintenance of Facility. To the extent required to achieve the Initial Delivery Date, and at all times during the Services Term, Seller shall maintain the Facility in accordance with Good Utility Practice.

6.5 Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

6.6 Planned Outages. Seller shall not schedule a planned outage of the Facility or any portion thereof between June 15 and September 15 during any Contract Year. No later than thirty (30) days prior to Seller's anticipated Initial Delivery Date, Seller shall deliver to Buyer a schedule of planned maintenance for the Facility for the following twelve (12) month period, which schedule shall: (a) be updated by Seller by each March 31 and September 30 to cover the twelve (12) month period following such update; (b) be consistent with the requirements of Good Utility Practice and the Interconnection Agreement; (c) indicate the planned commencement and completion dates for each planned maintenance during the period covered thereby, as well as the affected portion(s) of the Facility; and (d) be in form and substance reasonably acceptable to Buyer. To the extent Seller is required by any Transmitting Utility to provide information regarding maintenance, outages, or availability of the Facility, Seller shall, simultaneous with the submission thereof to such Transmitting Utility, deliver a copy thereof to Buyer.

6.7 PJM Membership. Seller shall, at all times during the Services Term, either: (a) be a member in good standing of PJM and be qualified as a PJM "Market Seller" pursuant to the PJM Agreements; or (b) have entered into an agreement with a Market Participant that will perform all of Seller's PJM-related obligations in connection with the Facility and this Agreement.

6.8 Forecasts. Commencing thirty (30) days prior to the anticipated Initial Delivery Date, and throughout the Services Term, Seller shall prepare and deliver to Buyer on a monthly basis and in a form reasonably acceptable to Buyer, twelve (12) month rolling forecasts of Energy production by the Facility, which forecasts shall be prepared in good faith and in accordance with Good Utility Practice based on historical performance, maintenance schedules, Seller's generation projections, and other relevant data and considerations.

6.9 Solar Photovoltaic Alternative Energy Source. Seller shall be solely responsible for certifying the Facility as a Solar Photovoltaic Alternative Energy Source under the AEPS Act and maintaining such certification during the Services Term.

6.10 Compliance Reporting. To the extent Buyer is subject to any certification or compliance reporting requirement with respect to the Products produced by Seller and delivered to Buyer hereunder, subject to the requirements of this Agreement, Seller shall use commercially reasonable efforts to provide any information in its possession (or, if not in Seller's possession, available to it and not reasonably available to Buyer) reasonably necessary to permit Buyer to comply with any such reporting requirement.

6.11 Initial Delivery Date. Seller shall achieve the Initial Delivery Date no later than the Guaranteed Initial Delivery Date *provided, however*, that the Guaranteed Initial Delivery Date shall be extended on a day-for-day basis for up to six (6) months to the extent that the Guaranteed Initial Delivery Date is delayed as a result of a Force Majeure Event. Such delayed Guaranteed Initial Delivery Date shall be the Guaranteed Initial Delivery Date. Seller shall provide Buyer with notice of (i) the expected occurrence of the Initial Delivery Date no later than thirty (30) days prior thereto; and (ii) the actual Initial Delivery Date no later than five (5) Business Days prior thereto.

6.12 Facility Guarantees. Seller guarantees that the Facility shall maintain the Availability Percentage required under Exhibit C, and shall pay Availability Damages, if any are due pursuant to Exhibit C.

6.13 Facility Design and Costs. As between Buyer and Seller, Seller (including its contractors and subcontractors) is solely responsible for all Facility design and all costs of installing, developing, financing, operating, maintaining and, to the extent applicable, removing the Facility from the Facility Site. Nothing in this Agreement or the Buyer's review of Seller's reports, nor its monitoring of the development and construction of the Facility, shall be construed as endorsement by Buyer of the design, engineering, construction, or testing of the Facility nor as any express or implied warranty as to the performance, safety, durability, or reliability of the Facility.

6.14 No Interference with Buyer's Products. Unless Buyer has agreed in writing, Seller shall not monetize or otherwise secure the benefits of the Energy and SPAECs of the Facility on behalf of any other Person if such action interferes with the qualification, scheduling, or transfer of the Products to Buyer as provided in this Agreement.

6.15 Insurance. Seller shall maintain at its sole expense, commencing with the Effective Date and continuing through the Contract Term, insurance for the Facility (including commercial general liability insurance) customarily maintained for facilities of similar type and size in Pennsylvania, but no less than a commercially reasonable business would obtain for a facility of similar value and operation. Seller shall provide certificates of insurance or other reasonable evidence of such insurance coverage acceptable to Buyer upon request. Failure to obtain and maintain the required insurance shall constitute a breach of the Agreement and Seller will be liable for any and all costs, liabilities, damages, and penalties (including attorneys' fees, court, and settlement expenses) resulting to Buyer from such breach, unless a written waiver of the specific insurance requirement is provided to Seller by Buyer and such failure may constitute an Event of Default in accordance with Section 14.2. Failure of Seller to provide insurance as herein required or failure of Buyer to require evidence of insurance or to notify Seller of any breach by Seller of the requirements of this Section shall not be deemed to be a waiver by Buyer of any of the terms and conditions of this Agreement, nor shall they be deemed to be a waiver of the obligation of Seller to defend, indemnify, and hold harmless Buyer as required herein. The obligation to procure and maintain any insurance required is a separate responsibility of Seller and independent of the duty to furnish a copy or certificate of such insurance policies. Notwithstanding any provision of this Agreement, none of the requirements contained herein as to insurance coverage to be maintained by Seller are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Seller under this Agreement, any other agreement with Buyer or its Affiliates, or otherwise provided by Law.

6.16 Facility Site Visits; Publicity. During the Contract Term, Buyer may request permission from Seller to visit the Facility site during normal business hours to monitor the construction, start-up, testing, and operation of the Facility at the Site and to verify compliance with this Agreement. Seller shall accommodate Buyer's reasonable requests for such visits, provided that Buyer shall comply with Seller's safety policies and instructions during any such visit to the Facility. Upon request by Buyer, Seller shall use reasonable efforts to permit Buyer to take photographs of the Facility, which photographs, if approved by Seller, may be used by Buyer for publicity purposes and internal communications. No Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written consent of the other Party, which approval shall not be unreasonably withheld. The preceding sentence shall not apply to communications or other filings with Governmental Authorities by Buyer, including any filings with the Commission or FERC.

ARTICLE 7 METERING

7.1 Metering. All electricity metering associated with the Facility, including the Facility Meter and any other real-time meters, billing meters and back-up meters, shall be installed, operated, maintained, and tested in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Transmitting Utility in whose territory the Interconnection Point is located, and any applicable Regional Reliability Entity. The Facility Meter shall be used for the registration, recording, and transmission of information regarding the Energy output of the Facility. As between the Parties, Seller, shall be responsible for the operation, maintenance, and calibration of the Facility Meter and any other real-time meters, billing meters, and back-up meters at the Facility in accordance with the Interconnection Agreement, Good Utility Practice, and any applicable requirements and standards issued by NERC, the Transmitting Utility in whose territory the Interconnection Point is located and any applicable Regional Reliability Entity. Seller shall provide Buyer with a copy of all metering, testing and calibration information and documents regarding the Facility Meter and any other real-time meters, billing meters, and back-up meters at the Facility promptly following receipt thereof by Seller.

7.2 Measurements. Readings of the Facility Meter as to the amount of Energy generated by the Facility; *provided, however*, that Seller, at the direction of Buyer and at Buyer's expense, shall cause the Facility Meter to be tested by the Transmitting Utility in whose territory the Facility is located, and if the Facility Meter is out of service or is determined to be registering inaccurately by more than two percent (2%): (a) measurement of Energy produced by the Facility shall be adjusted in accordance with the filed tariff of such Transmitting Utility; and (b) Seller shall reimburse Buyer for the cost of such test of the Facility Meter.

7.3 Testing and Calibration. Buyer shall have the right to have a representative(s) present during any testing or calibration of the Facility Meter.

7.4 Audit of Facility Meter. Buyer shall have access to the Facility Meter and any other real-time meters, billing meters, and back-up meters at the Facility and the right to audit all information and test data related to such meters.

7.5 Notice of Malfunction. Seller shall provide Buyer with prompt notice upon becoming aware of any material malfunction or other failure of the Facility Meter or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility.

7.6 Telemetry. The Facility Meter shall be capable of sending meter telemetry into Seller's PJM eMeter account and Seller shall provide Buyer with access to such Power Meter data. Seller shall transmit to Buyer, via virtual private network, all telemetry data measured by the Facility Meter, including MW, MVAR, MWh, MVARh, isolation breaker open/closed status, interconnection bus voltage and amp flow. Without limiting the foregoing, all such telemetry equipment shall comply with PJM requirements for PJM transmission owners.

ARTICLE 8 BILLING AND PAYMENT

8.1 Price for Energy, Capacity and SPAECs. Buyer shall pay the Contract Price for all Energy delivered to the Delivery Point for Buyer's account in accordance with Section 5.1 and Auction Specific Unforced Capacity or Replacement Capacity and SPAECs delivered to Buyer in accordance with Sections 5.2 and 5.3. Buyer shall not be obligated to make any other payments to Seller for any Energy, Capacity or SPAECs delivered or required to be delivered by Seller to Buyer pursuant to this Agreement.

8.2 Billing. Unless otherwise agreed to by the Parties, on or before the fifteenth (15th) day of each month (or the first Business Day thereafter), Seller shall deliver to Buyer, via electronic transmission or other means agreed to by the Parties, an Invoice that sets forth: (a) the net amount due from one Party to the other for all Products delivered by Seller to Buyer pursuant to the terms of this Agreement as of the end of the immediately preceding calendar month; and (b) any other credits, charges, and liabilities due pursuant to the terms of this Agreement, including any adjustments and outstanding amounts due pursuant to prior Invoices. All Invoices to Buyer shall include the supporting documentation reasonably necessary to demonstrate how the Invoice amounts were calculated, including information from PJM to substantiate all calculations of the Energy delivered by Seller to the Delivery Point and GATS documentation of SPAEC transfers to Buyer, and any additional information reasonably requested by Buyer (including any information related to participation of the Facility in any capacity market operated by PJM). All Invoices will be accumulated by Buyer over a sixty (60) day period (the "Accumulation Period"). Buyer shall pay to Seller or Seller shall pay to Buyer, as the case may be, the total amount due on the first(1st) Business Day of the month following the end of the Accumulation Period (such day, the "Settlement Date").

8.3 Payment. All payments shall be made by "Electronic Funds Transfer" (EFT) via "Automated Clearing House" (ACH), to a bank designated in writing by the Party to which payment is owed, by 11:59:59 pm EPT on the payment due date or in accordance with Section 4.4 as applicable. Payment of an Invoice shall not be deemed an admission or waiver with respect to any matter related to such Invoice or the charges reflected therein.

8.4 Interest. Interest on delinquent amounts (including amounts determined to be owed as a result of the resolution of a billing dispute) shall be calculated at the Interest Rate (a)

from the original due date (or, for amounts not properly invoiced, the date that would have been the due date if such amounts were properly invoiced) to the date of payment; or (b) in the case of reimbursement obligations, from the date an overpayment was received until the date of reimbursement.

8.5 Set-Off. Each of Buyer and Seller shall have the right to set-off any undisputed amounts owed by the other Party pursuant to this Agreement against any undisputed amounts that it owes to such Party pursuant to this Agreement.

8.6 Billing Disputes. Either Party may, in good faith, dispute any amount charged or paid pursuant to an Invoice within twelve (12) months of the date of such Invoice by providing a written statement setting forth the basis of such dispute. Each Party shall remain obligated to pay any undisputed amounts pending resolution of a billing dispute. Failure by a Party to deliver notice of a billing dispute within the time period set forth herein shall be deemed a waiver of such Party's right to dispute such Invoice. The Parties shall continue to perform under this Agreement during the period of any billing dispute but shall not be precluded from exercising any other remedy available under this Agreement. A billing dispute shall be subject to the provisions of Article 17. Any amount determined to be owed as a result of the resolution of a billing dispute shall be paid within fifteen (15) days of such resolution, along with accrued interest in accordance with Section 8.4.

8.7 PJM Accounting Procedures. Each of Buyer and Seller shall comply with all applicable PJM accounting procedures in connection with invoicing and settlement for amounts due under this Agreement.

ARTICLE 9 TAXES AND FEES

9.1 Taxes, Fees, and Expenses.

- 9.1.1 Seller shall pay any and all Taxes, costs, fees, and expenses, including any and all Taxes and transaction costs, fees, and expenses attributable to or arising from the sale of the Products under this Agreement, including ad valorem taxes, taxes related to the operation or maintenance of the Facility, and other taxes attributable to the Facility or interests in land associated with the Facility.
- 9.1.2 Buyer shall pay any and all Taxes, costs, fees, and expenses on or with respect to the Products being delivered to Buyer hereunder after delivery thereof in accordance with this Agreement (other than ad valorem, franchise, or income taxes related to the sale of the Products, which shall be the responsibility of Seller).
- 9.1.3 If Buyer is required by law or regulation to remit or pay Taxes, which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement.

- 9.1.4 Nothing herein shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under the law and for which it timely asserts and diligently pursues such exemption, until final determination thereof.

ARTICLE 10 CREDIT AND SECURITY

10.1 Credit Support. If Seller's (or Seller's Guarantor's, if any) Credit Rating is at or above Investment Grade and provides a Guaranty, Seller shall have no requirement to provide Performance Assurance other than such Guaranty. If during the Contract Term, Seller (or Seller's Guarantor, if any) is no longer rated at or above Investment Grade, Seller must post, within five (5) Business Days, Performance Assurance equal to the Performance Assurance Amount.

10.2 Grant of Security Interest. To secure its obligations under this Agreement, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of set-off against), and assignment of, all cash collateral and cash-equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer; provided, however, that such interest may be junior to an interest granted by Seller in such collateral or proceeds for purposes of financing the development, construction, or operation of the Facility. Seller agrees to take such action as reasonably required to perfect in favor of Buyer such security interest in, and lien on (and right of set-off against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

10.3 Remedies. Upon or any time after the occurrence of an Event of Default by Seller, Buyer may do any one or more of the following: (i) exercise any of the rights and remedies of Buyer with respect to all collateral, including any such rights and remedies under Law then in effect; (ii) exercise its rights of set-off against any and all property of Seller in the possession of Buyer, whether held in connection with this Agreement or any other agreement(s) between Buyer and Seller for the provision of Energy, Capacity or SPAECs; (iii) draw on any outstanding Performance Assurance or Guaranty issued for Buyer's benefit; and (iv) liquidate all collateral security held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral security realized upon the exercise of such rights or remedies to reduce Seller's obligation under this Agreement or any other agreement(s) between Buyer and Seller for the provision of Energy, Capacity or SPAECs (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

10.4 Forms of Performance Assurance. At Seller's choice, the following are deemed to be acceptable methods for posting Performance Assurance, if required:

- (a) Cash. Buyer shall not be entitled to hold Performance Assurance in the form of cash; rather, Performance Assurance in the form of cash shall be held in any Qualified Institution. Buyer will pay to Seller on the first Business Day of each calendar quarter the amount of interest it receives based upon the applicable overnight repurchase interest rate from the Qualified Institution on any Performance Assurance in the form of cash posted by Seller.

- (b) Letter of Credit. A Letter of Credit shall state that it shall renew automatically for successive one-year periods unless Buyer receives written notice from the issuing financial institution at least ninety (90) days prior to the expiration date stated in the Letter of Credit that the issuing financial institution elects not to extend the Letter of Credit. If Buyer receives notice from the issuing financial institution that the Letter of Credit will not be extended, Seller will be required to provide a substitute Letter of Credit from an alternative bank or financial institution. The receipt of the substitute Letter of Credit must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least ten (10) Business Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit as required herein, then Buyer will have the right to draw on the expiring Letter of Credit and to hold the amount as collateral. Seller shall have the right to amend its Letter of Credit to reflect any reduction of Performance Assurance under this Agreement.

10.5 Calling on Security. Upon an Event of Default by Seller, Buyer may call upon any Guaranty or the Performance Assurance posted by Seller in accordance with their terms and conditions. If Seller fails to pay amounts due to Buyer pursuant to this Agreement, including any damages that may be due hereunder, or any other agreement(s) between Buyer and Seller for the provision of Energy, Capacity and SPAECs after written notice of default is provided to Seller and any applicable cure period set forth in this Agreement ends. Within thirty (30) days of the Facility Commercial Operation Date, Seller shall replenish the Performance Assurance to the extent reduced by the amount of any draws prior to the Facility Commercial Operation Date and thereafter shall have no obligation to replenish the Performance Assurance.

Release of Security. Promptly following the end of the Contract Term or the earlier termination of this Agreement and the satisfaction of all of Seller's obligations hereunder, Buyer shall promptly release any Performance Assurance held by it to Seller.

10.6 No Limit of Liability. Except to the extent expressly stated in this Agreement, the required amounts of any Guaranty or other form of Performance Assurance shall not be deemed to be a limitation of Seller's liability.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of Both Parties. As of the Effective Date, each Party hereby represents and warrants to the other Party that:

- (a) it is duly organized or formed, validly existing, and in good standing under the Laws of the jurisdiction of its organization or formation, and is qualified to conduct its business in all jurisdictions necessary to perform its obligations hereunder;
- (b) the execution, delivery, and performance of this Agreement are within its powers, have been duly authorized by all necessary action, and do not

violate any of the terms or conditions in its governing documents, any agreement to which it is a party or by which it or any of its property is bound, or provisions of law applicable to it;

- (c) the execution, delivery and performance of this Agreement will not result in the creation or imposition of any Lien upon its properties (except as expressly contemplated in favor of Buyer pursuant to this Agreement), the creation or imposition of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (d) except as set forth in and as required by this Agreement, no consent, approval, order or authorization of, or registration, declaration, or filing with, any Governmental Authority is required by such Party in connection with the execution, delivery or performance of this Agreement;
- (e) this Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other Laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending;
- (f) no Event of Default has occurred and there are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it;
- (g) to such Party's knowledge, there are no actions, proceedings, judgments, rulings or orders, issued by or pending before any Governmental Authority, that would materially adversely affect its ability to perform its obligations under this Agreement; and
- (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement.
- (i) it will have all Permits necessary for it to legally perform its obligations under this Agreement, or with respect to Seller, such Permits will be obtained by Seller in the ordinary course of its development and construction of the Facility; and
- (j) it is, and will continue to be for the Term, a Forward Contract Merchant both generally and with respect to the Product delivered and purchased under this Agreement.

11.2 Forward Contract. The Parties acknowledge that this Agreement is a Forward Contract and the Parties are Forward Contract Merchants, both generally and with respect to the deliveries of the Product pursuant to this Agreement, that each party is an “eligible contract participant” as set forth in the Commodities Exchange Act; and, accordingly, the Parties are entitled to the protections of the provisions of the Bankruptcy Code with respect to the rights or remedies afforded to non-bankrupt Forward Contract Merchants under Forward Contracts with bankrupt counter-parties. The Parties therefore agree that this Agreement may be terminated and the remedies hereunder exercised by either Party in accordance with Article 2 and Article 14 hereof upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination.

11.3 Disclaimer of Implied Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THERE ARE NO WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED:

ARTICLE 12 ASSIGNMENT

12.1 Assignment; Change in Control. Neither Party shall assign this Agreement or delegate its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; otherwise any such assignment or delegation shall be voidable at the option of the other Party. Notwithstanding the foregoing, either Party may, without the prior consent of the other Party, (i) transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements (and without relieving itself from liability hereunder), (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate’s creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof, including the requirements for creditworthiness and security under Article 10 hereof, and that the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. A Change in Control of Seller will be subject to the prior written consent of Buyer, such consent not to be unreasonably withheld.

ARTICLE 13 FORCE MAJEURE

13.1 Force Majeure. If either Party is rendered unable by a Force Majeure event to carry out, in whole or in part, its obligations under this Agreement, then, during the pendency of such event of Force Majeure, the obligations of the affected Party (other than the obligation to make payments hereunder when due) shall be suspended, subject to Section 2.2(c) hereof to the extent required.

13.2 Notice. The affected Party shall (i) give the other Party written notice within 48 hours of the commencement of the Force Majeure event, with details to be supplied within three

(3) Business Days after the commencement of the Force Majeure event further describing the particulars of the occurrence of the Force Majeure event, and (ii) take all reasonable steps to remedy the cause of the Force Majeure event with all reasonable dispatch.

13.3 No Extension of Term. Whenever either Party is required to commence or complete any action within a specified period, such period shall be extended by an amount equal to the duration of any event of Force Majeure occurring or continuing during such period; provided, however, that, subject to Section 2.2(c) hereof, in no event will any Force Majeure event extend this Agreement beyond the Services Term.

ARTICLE 14 EVENTS OF DEFAULT; REMEDIES

14.1 Events of Default. An “Event of Default” by a Party (the “Defaulting Party”) shall mean the occurrence of any of the following:

- (a) the failure to make, when due, any undisputed payment required to be made pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice thereof is received;
- (b) any representation, warranty, or covenant made by such Party herein shall be false or misleading in any material respect and shall remain uncured for a period of thirty (30) days after written notice thereof;
- (c) such Party’s unexcused failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) days after written notice thereof;
- (d) such Party transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another entity without the other Party’s prior written consent and otherwise as per the terms and conditions of this Agreement
- (e) such Party is the subject of a voluntary bankruptcy, insolvency, or similar proceeding;
- (f) such Party applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official to manage all or a substantial portion of its assets; and
- (g) any Permit or government approval necessary for a Party to be able to perform as contemplated by this Agreement is not received, expires or is revoked, or suspended and is not renewed or reinstated within a reasonable period following the expiration, revocation, or suspension thereof, by reason of the action or inaction of such Party and such expiration, revocation, or suspension creates a material adverse impact to the other Party.

14.2 Additional Seller Events of Default. Any of the following events shall constitute an Event of Default of Seller.

- (a) In the event that the Initial Delivery Date occurs more than one-hundred hundred eighty (180) days after the Guaranteed Initial Delivery Date, excluding any number of days associated with extensions of the Guaranteed Initial Delivery Date for Force Majeure Events as provided by the definition of Guaranteed Initial Delivery Date;
- (b) The failure by Seller to deliver to Buyer in accordance with this Agreement any Products required to be delivered hereunder or delivery or sale of any such Products to any Person other than Buyer if not expressly permitted under this Agreement and such failure is not remedied within five (5) Business Days after written notice thereof is received;
- (c) PJM shall have declared Seller to have committed an event of default under any provision of the PJM Agreements (after the applicable cure periods therein) if such default is not remedied within thirty (30) days after the declaration is made;
- (d) The failure by Seller to provide a Guaranty or other Performance Assurance as Required by Article 10;
- (e) The failure by Seller to comply with Section 6.7 if such failure is not remedied as soon as practicable (and no more than thirty (30) days) after Seller becomes aware of such failure;
- (f) The failure by Seller to obtain and maintain insurance as required under Section 6.16 if such failure is not remedied within ten (10) Business Days after written notice thereof is received; and
- (g) The failure by Seller to maintain the Availability Requirement, as required under Section 6.12, for two Contract Years (including two non-consecutive Contract Years).

14.3 General Remedies. If an Event of Default has occurred and is continuing with respect to a Defaulting Party, the other Party (the “Non-Defaulting Party”) shall have the right to (a) suspend performance under this Agreement, and/or (b) exercise any remedies available at law or in equity, including termination of this Agreement. Without limiting the generality of the foregoing, upon an Event of Default, the Non-Defaulting Party shall have the right to exercise its remedies under any Performance Assurance.

14.4 Delay Damages. In the event that Seller does not meet the Initial Delivery Date, for each day beginning with the day after the Guaranteed Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, Seller shall pay liquidated damages in the amount of \$0.20 per kW of Buyer’s Percentage of the Facility Nameplate Rating per day (“Delay Damages”). Delay Damages shall be paid by Seller within thirty (30) days after the end of the month in which the Delay Damages accrue. The Parties acknowledge and agree that (a)

calculation of actual damages that Buyer would suffer as a result of a delay in the Initial Delivery Date would be difficult or impossible to ascertain; (b) obtaining an adequate remedy may be difficult; and (c) the amount of Delay Damages constitutes a fair and reasonable approximation of the damages Buyer will incur as a result of delay in the Initial Delivery Date and is not intended as, nor shall it be deemed, a penalty. Subject to Section 10.5 and excluding Buyer's right to terminate as a result of a Seller Event of Default under Section 14.2 (a), the rights set forth pursuant to this Section 14.4 shall be Buyer's exclusive remedy for Seller's delay in achieving the Guaranteed Initial Delivery Date. Buyer acknowledges and agrees that Seller's liability for Delay Damages and any damages upon termination prior to the Guaranteed Initial Delivery Date shall in no event exceed the applicable Performance Assurance Amount.

14.5 Damages on Termination.

- 14.5.1 Upon a termination of this Agreement by Buyer based on a Seller Event of Default other than an Event of Default under Section 14.2(a), Buyer shall be entitled to recover the net present value of (a) the replacement cost of Energy, Capacity and SPAECs supplied from a solar energy generating resource less (b) the cost of Energy, Capacity and SPAECs that Buyer would have incurred at the Contract Price, with all Energy delivered to the Delivery Point, during all hours of the Services Term (or the remainder thereof).
- 14.5.2 Upon a termination of this Agreement by Seller based on a Buyer Event of Default, Seller shall be entitled to recover the net present value of (a) the price of Energy, Capacity and SPAECs at the Contract Price less (b) the market price of Energy at the Delivery Point, Capacity and SPAECs supplied from a solar energy generating resource during all hours of the Services Term (or the remainder thereof) under a long-term contract for the Services Term (or the remainder thereof).
- 14.5.3 All calculations under this Section 14.5 shall be determined in a commercially reasonable manner, and may include reference to one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads, or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining Services Term and include the value of Capacity and SPAECs. For the avoidance of doubt, the Non-Defaulting Party shall not be required to enter into a replacement transaction in order to establish the amounts owed under this Agreement.
- 14.5.4 The Parties acknowledge and agree that: (i) the inherent value of Energy supplied from a solar energy generating resource is a primary reason Buyer is entering into this Agreement; (ii) in the event of termination of this Agreement based on a Seller Event of Default, Buyer will likely be required

to replace the Energy and Capacity that would have been provided hereunder with Energy and Capacity supplied from another solar energy generating resource; and (iii) in the event of termination of this Agreement by Seller based on a Buyer Event of Default, Seller will likely sell the Energy that would have been sold hereunder to a Party seeking Energy and Capacity supplied from a solar energy generating resource.

14.6 Right of First Offer. If Seller or any Seller Affiliate seeks to enter into an agreement to sell any of the Products generated by, or associated with, a solar energy generating project on the approximate location of the Facility at any time after the Agreement has been terminated by Buyer due to a Seller Event of Default, or pursuant to Section 2.2(c), but prior to one hundred eighty (180) days after such termination, Buyer shall have a right of first offer for any proposed sale of the Products by Seller or Seller Affiliate. Buyer shall have thirty (30) days to submit a purchase offer after its receipt of written notice from Seller of the intention of Seller (or an Affiliate of Seller) to seek to enter into an agreement for the Products and Seller and its Affiliates shall negotiate a purchase agreement with Buyer in good faith. If no agreement is executed within forty-five (45) days following Buyer's delivery to Seller of such purchase offer, Seller and its Affiliates may negotiate with third parties for the sale of the Products; *provided, however*, such agreement may not be on terms more favorable to the new buyer than the terms set forth in Buyer's proposed purchase offer.

14.7 Facility Lender's Right to Cure. In connection with any financing or refinancing of the Facility by Seller, Buyer shall use good faith efforts to work with Seller and the Facility Lender to (1) agree upon a Financing Assignment of this Agreement, including with respect to: (i) Buyer's notice of any Seller Event of Default to such Facility Lender; and (ii) Buyer's acceptance of a cure of any Seller Event of Default by the Facility Lender, so long as the cure is accomplished within the applicable cure periods set forth in this Agreement or the Financing Assignment; and (2) execute and deliver any estoppels or other documents that may be reasonably required for Seller to finance or refinance the Facility. Seller shall promptly reimburse Buyer for its reasonable fees, including attorneys' fees, to review and prepare documents in connection with Seller's financing or refinancing of the Facility.

14.8 Exclusion of Consequential Damages. 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, CONTRACT, OR OTHERWISE; PROVIDED THAT THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY BY A PARTY OF ANY LIQUIDATED DAMAGES EXPRESSLY PROVIDED HEREIN, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNIFIED PERSON UNDER ANY INDEMNITY PROVISION IN RESPECT OF A THIRD-PARTY CLAIM OR WITH RESPECT TO THE GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT OF A PARTY.

14.9 Liquidated Damages. The Parties acknowledge and agree that: (a) Buyer shall be damaged by Seller's failure to meet its obligations as specified in Sections 6.12 and 14.4; (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom; (c) any sums that would be creditable or payable under those sections are in the nature of liquidated

damages, and not a penalty, and are fair and reasonable; and (d) each payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from each such failure.

ARTICLE 15 INDEMNIFICATION

15.1 Indemnification Obligation. Each Party, to the extent permitted by law, shall indemnify, defend, and hold harmless the other Party, its affiliated companies, and all of their directors, officers, employees, agents, and representatives from and against all claims, liabilities, damages, losses, or expenses to the extent arising out of any negligence, willful misconduct, breach of contract, or violation of law of, or by, the indemnifying Party, its employees, agents, subcontractors, or assigns in the performance of this Agreement. In the event the Parties are jointly at fault, each Party shall indemnify the other in proportion to its relative fault.

15.2 Scope of Indemnification. The claims, liabilities, damages, losses, or expenses covered for which indemnification may be sought under this Article 15 include, but are not limited to, settlements, judgments, court costs, attorneys' fees and other litigation expenses, fines, and penalties arising out of actual or alleged (a) injury to or death of any person, including employees of Buyer or Seller; (b) loss of or damage to property, including property of Buyer or Seller; (c) breach of contract; or (d) damage to the environment.

15.3 Notice. A Party seeking indemnification under this Article 15, shall give written notice to the indemnifying Party as soon as reasonably practicable after becoming aware of the facts and circumstances which may give rise to any claims, liabilities, damages, losses, or expenses for which indemnification may be sought under this Article 15.

ARTICLE 16 CONFIDENTIALITY

16.1 Confidentiality. Except as provided in this Article 16, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the Term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its Affiliates and to persons investing in, providing funding to, or acquiring it or its affiliates, and to its and the foregoing persons' respective attorneys, accountants, representatives, agents, and employees who have a need to know such Confidential Information related to this Agreement.

16.2 Required Disclosure. If required by any law, statute, ordinance, decision, order, or regulation passed, adopted, issued, or promulgated by a Governmental Authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the Governmental Authority, as required by the applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits; provided that such Party has notified the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that Governmental Authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

16.3 Tax Treatment Exception. Notwithstanding any provision of this Agreement to the contrary, the legal obligations of confidentiality hereunder do not extend to the U.S. federal or state tax structure or the U.S. federal or state tax treatment of any transaction hereunder. If any U.S. federal or state tax analyses or materials are provided to a Party, such Party is free to disclose any such analyses or materials without limitation.

16.4 Survival. The Parties obligations under this Article 16 shall survive for a period of one (1) year following the expiration or termination of this Agreement.

ARTICLE 17 DISPUTE RESOLUTION

17.1 Informal Dispute Resolution. Before initiating legal action pursuant to Section 17.2 for any billing dispute, a Party aggrieved by a dispute hereunder shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts determined to be owed as a result of informal dispute resolution pursuant to this Section 17.1 shall be paid within fifteen (15) days of such resolution.

17.2 Formal Dispute Resolution. After the requirements of Section 17.1 have been satisfied, either Party may initiate legal action in accordance with Sections 18.5 and 18.6.

ARTICLE 18 MISCELLANEOUS

18.1 Entire Agreement. This Agreement, together with any attachments or exhibits specifically referenced herein, constitutes the entire agreement and understanding of the Parties with respect to the subject matter hereof, supersedes all prior oral or written representations and contracts, and may be modified only by a written amendment signed by the Parties.

18.2 Severability. In the event that any provision of the Agreement shall be found to be void or unenforceable, such findings shall not be construed to render any other provision of the Agreement either void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either Party.

18.3 Waiver. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions hereof is breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

18.4 Notices. All notices, payments, and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing using the contact information set forth in Exhibit H or to such other person at such other address as a Party may designate by like notice to the other Party. Notices required to be in writing shall be

delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is sent by facsimile (and confirmed) or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt. Notices sent by electronic messaging system will be deemed received on the date the electronic message is received (it being agreed that the burden of proving receipt will be on the sender and will not be met by automatic out-of-office or similar replies). Notice received after the close of the Business Day shall be deemed received on the next Business Day.

18.5 Governing Law. This Agreement shall be construed, enforced, and performed in accordance with the laws of the Commonwealth of Pennsylvania, without recourse to principles governing conflicts of law.

18.6 Jurisdiction and Venue. Except for matters subject to the exclusive or primary jurisdiction of FERC, the Commission, or the appellate courts having jurisdiction over the Commission or FERC matters, all disputes hereunder shall be resolved in the federal or state courts of the Commonwealth of Pennsylvania. Each Party hereby irrevocably submits to the *in personam* jurisdiction of such courts for such purpose. Each Party hereby waives its respective rights to any jury trial with respect to any litigation arising under or in connection with this Agreement.

18.7 Compliance with Laws. Except as otherwise expressly provided in this Agreement, each Party shall comply, at its own expense, with the provisions of all laws and any applicable order and/or regulations, or any amendments or supplements thereto, which have been, or may at any time be, issued by a Governmental Authority relating to this Agreement and the transactions hereunder.

18.8 Remedies Cumulative. No right or remedy herein conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under applicable law, whether now or hereafter existing.

18.9 Binding Effect; Limitation of Benefits. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and, subject to the provisions of Article 12 hereof, their successors and permitted assigns. Nothing in this Agreement is intended to confer benefits, rights, or remedies unto any Person other than the Parties and their permitted successors and assigns, and no third party shall have the right to enforce the provisions of this Agreement. 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.

18.10 No Partnership or Joint Venture. This Agreement is not intended to create nor shall it be construed to create any partnership or joint venture relationship between Buyer and Seller, and neither Party hereto shall have the power to bind or obligate the other Party. Neither Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise.

18.11 Audit. Each Party shall have the right, upon at least five (5) Business Days' prior written notice, at its sole expense and during normal working hours, to examine the records of the

other Party to the extent reasonably necessary to verify the accuracy of any statement, charge, or computation made pursuant to this Agreement, including records necessary to verify that Buyer has received and is receiving Buyer's Percentage of Products produced by the Facility. If any such examination reveals any inaccuracy in any Invoice, the necessary adjustments in such Invoice and the payments thereof will be made in accordance with Sections 8.1 and 8.6.

18.12 Records. Each Party shall keep and maintain all books and records as may be necessary or useful in performing or verifying any calculations made pursuant to this Agreement or in verifying such Party's performance hereunder, including operating logs, Facility output data, meter readings and financial records, all in accordance with Good Utility Practice. Each Party shall provide such books and records to the other Party within fifteen (15) Business Days of a written request for such information. All records shall be retained by each Party for at least three (3) years following the year in which such records were created.

18.13 Survival. Except as otherwise expressly provided in this Agreement, obligations, limitations, exclusions, and duties which by their nature extend beyond the expiration or termination of this Agreement, as well as any other provisions necessary to interpret the respective rights and obligations of the Parties hereunder, shall survive the expiration or earlier termination of this Agreement.

18.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the Parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date indicated below.

ATTEST:

Buyer

By: _____
Name: [Insert Name]
Title: [Insert Title]
Date: _____

By: _____
Name: [Insert Name]
Title: [Insert Title]
Date: _____

ATTEST:

Seller

By: _____
Name: [Insert Name]
Title: [Insert Title]
Date: _____

By: _____
Name: [Insert Name]
Title: [Insert Title]
Date: _____

EXHIBIT A
FACILITY DESCRIPTION

Facility Name:

Facility Address:

Type of AEPS Alternative Energy Source: solar photovoltaic

Energy Delivery Point: PECO_RESID_AGG Zone

Description of Facility Generating Units and related facilities (including number, manufacturer, and model of Facility Generating Units, and layout):

Description of Interconnection Facilities:

Facility Nameplate Capacity Rating (MW):

Estimated Capacity Factor (%):

The attached site map indicates the location and layout of the Facility equipment and other site details.

The attached diagram shows the Energy Delivery Point, metering devices, and other equipment installed at the Facility.

Seller Ultimate Parent:

EXHIBIT B

MILESTONE SCHEDULE

Major Permits Milestone date:

Major Permits [list here]:

- 1.
- 2.
- 3.

Financing Milestone date:

Notice to Proceed Date to Major Generation Equipment Supplier(s):

Notice to Proceed Date to Balance of Plant Contractor:

Construction Milestone Dates:

Facility Commercial Operation Date Milestone:

EXHIBIT C

AVAILABILITY CALCULATIONS

1. Availability Damages. For any Period in which Seller does not maintain the Guaranteed Availability Percentage, Seller shall pay to Buyer liquidated damages (“Availability Damages”) in an amount equal to the product of (a) the Contract Price; (b) the Buyer’s Percentage; (c) the Facility Nameplate Rating; (d) the resulting difference of the Guaranteed Availability Percentage minus the Availability Percentage for such Period; and (e) 20% times the Available Hours as defined below; *provided however*, that the first determination of the Availability Percentage of the Facility shall be calculated twenty-four (24) months after the Initial Delivery Date (the “First Availability Calculation Date”). Commencing on the First Availability Calculation Date (or the first Business Day thereafter) and continuing on or before the fifteenth (15th) day of each Period (or the first Business Day thereafter) thereafter during the Services Term, Seller shall provide Buyer with the Availability Percentage calculated for the preceding Period along with any supporting documentation reasonably required for Buyer to independently confirm Seller’s Availability Percentage calculation.
2. Availability Requirement. Seller shall maintain an Availability Percentage equal to or greater than 90% each Period (as defined below) (the “Availability Requirement”).
3. Definitions. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement. For purposes of this Exhibit C, the following capitalized terms shall be defined as follows.

The Availability Percentage of the Facility shall be calculated as follows:

$$AP = 100 * \left(\frac{\sum (\text{of all Units}) MW_{Unit} * [(AH - TOH) / AH]}{\sum (\text{of all Units}) MW_{Unit}} \right)$$

Where:

AH = Available Hours

AP = Availability Percentage

TOH = Total Outage Hours

“Availability Damages” shall have the meaning set forth in Section 1 of this Exhibit C.

“Available Hours” means the result of the Total Period Hours less the Force Majeure Event Hours.

“Equivalent Forced Outage Hours” means the total number of equivalent hours in a Period that (a) represents an immediate reduction in output or capacity or removal from service, in whole or in part, of a Unit by reason of an emergency or threatened emergency, unanticipated failure, or other cause beyond the control of Seller, (b) Instructed Operation, or (c) a reduction in output of the Facility caused by the action or inaction of Buyer; *provided, however,* that any Force Majeure Event Hours shall not be counted as Equivalent Forced Outage Hours. A reduction in output or removal from service of a Unit or the Facility in response to changes in market conditions shall not constitute Equivalent Forced Outage Hours.

“Equivalent Maintenance Outage Hours” means the total number of equivalent hours during daylight periods in a Period that represents the scheduled removal from service, in whole or in part, of a Unit in order to perform necessary repairs on specific components of the Unit, except to the extent such hour is an Equivalent Forced Outage Hour, Equivalent Planned Outage Hour, or a Force Majeure Event Hour.

“Equivalent Planned Outage Hours” means the total number of equivalent hours during daylight periods in a Period that represents the scheduled removal from service, in whole or in part, of a Unit for inspection, maintenance or repair, except to the extent such hour is an Equivalent Forced Outage Hour, Equivalent Maintenance Outage Hour, or a Force Majeure Event Hour.

“First Availability Calculation Date” shall have the meaning set forth above in Section 1 of this Exhibit C.

“Force Majeure Event Hours” means the total number of hours in a Period during which either Seller or Buyer has declared a Force Majeure Event for one or more Units.

“Guaranteed Availability Percentage” shall mean ninety percent (90%).

“MWUnit” means the portion of the Facility Nameplate Rating associated with a given Unit.

“Period” means, beginning at the end of the second Contract Year, the immediately preceding period of two (2) Contract Year non-rolling block periods for which the Availability Percentage is being calculated.

“Total Outage Hours” means the sum of Equivalent Forced Outage Hours, Equivalent Maintenance Outage Hours and Equivalent Planned Outage Hours for a Period.

“Total Period Hours” means the total number of hours in a Period.

“Unit” means each solar generation unit forming a part of the Facility, as described in Exhibit A.

A sample calculation of Availability Damages is shown below:

Assumptions:

1. Facility consists of 20 units (corresponding to inverters associated with 1.25MW).

2. Relevant period is 24 months (with no leap year).
3. No Force Majeure during the event period.
4. The Facility operated correctly except for six inverters which failed; the inverters were not replaced for a year due to supply chain issues.
5. Contract Price is \$85 (per MWh)

$$AP = 100\% * (14 * 1.25 * ((17,520 - 0) / 17,520) + 6 * 1.25 * ((17,520 - 8760) / 17,520)) / (20 * 1.25) = 85.00\%$$

$$\text{Availability damages} = \$85 * 100\% * 25 * (90\% - 85.00\%) * 3,504 = \$372,300$$

EXHIBIT D
CONTRACT TERMS

Buyer's Percentage (% x Facility Nameplate Rating):

Estimated Annual Total Facility Energy Production (MWh/Contract Year):

Type of AEC: AEPS Tier I solar photovoltaic

Contract Price (\$/MWh as bid by Seller):

Guaranteed Initial Delivery Date:

EXHIBIT E

FORM OF GUARANTY AGREEMENT

GUARANTY (this “Guaranty”), dated as of [Insert Date], made by _____ (the “Guarantor”), a corporation organized and existing under the laws of [Insert Law References] in favor of [Insert Company Name] (the “Guaranteed Party”), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

Guarantor enters into this Guaranty in consideration of, and as an inducement for Guaranteed Party having entered into or entering into the “Agreement(s)” with [Insert Name] (Name), a [Insert State] (State) corporation (the “Seller”), which may involve the extension of credit by the Guaranteed Party. Guarantor, subject to the terms and conditions hereof, hereby unconditionally and absolutely guarantees to the Guaranteed Party the full and prompt payment when due, subject to an applicable grace period and upon demand in writing from the Guaranteed Party to the Guarantor’s attention at the address for Guarantor set forth in Section 11 hereof of any and all amounts payable by the Seller to the Guaranteed Party arising out of the Agreement(s), and,

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of the principal and interest on any sums due and payable by the Seller as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement(s)). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall Option 1 (in no event exceed [Insert Limit Amount].) Option 2 (in no event exceed the lesser of [Insert Limit Amount] or the sum of the Credit Exposures Amounts under the Agreement(s).) All such principal, interest, obligations, and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection.
2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by any Guaranteed Party against, and any other notice to, any party liable thereon (including the Guarantor or any other guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the Seller, and any right to require a proceeding first against the Seller.
3. The Guaranteed Party may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (i) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, any Document or any person (including the Seller) that the Guaranteed Party determines in its sole discretion to be necessary or appropriate; (ii) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the Seller to the Guaranteed Party; or (iii) compromise or subordinate any

Guaranteed Obligation(s) or liability of the Seller to the Guaranteed Party including any security therefore.

4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by: (i) any extension, renewal, settlement, compromise, waiver, consent, discharge, or release by the Seller concerning any provision of the Agreement(s) in respect of any Guaranteed Obligations of the Seller; (ii) the rendering of any judgment against the Seller or any action to enforce the same; (iii) the existence, or extent of, any release, exchange, surrender, non-perfection, or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (iv) any modification, amendment, waiver, extension of, or supplement to any of the Agreement(s) or the Guaranteed Obligations agreed to from time to time by the Seller and the Guaranteed Party; (v) any change in the corporate existence (including its constitution, laws, rules, regulations, or powers), structure or ownership of the Seller or the Guarantor, or any insolvency, bankruptcy, reorganization, or other similar proceedings affecting the Seller or its assets, the Guarantor or any other guarantor of any of the Guaranteed Obligations; (vi) the existence of any claim, set-off, or other rights which the Guarantor may have at any time against the Seller, the Guaranteed Party or any other corporation or person, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; (vii) the invalidity, irregularity, or unenforceability in whole or in part of the Agreement(s) or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same, or any provision of applicable law or regulation purporting to prohibit payment by the Seller of amounts to be paid by it under the Agreement(s) or any of the Guaranteed Obligations; and (viii) except for a failure to comply with any applicable statute of limitations, any other act or omission to act or delay of any kind of the Seller, any other guarantor, the Guaranteed Party or any other corporation or person or any other event, occurrence, or circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.
5. The Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the Seller or any collateral security or guaranty or right of offset held by the Guaranteed Party therefore.
6. The Guarantor will not exercise any rights which it may acquire by way of subrogation until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement(s) have been paid in full.
7. Subject to the terms and conditions hereof, this Guaranty is a continuing one, and all liabilities to which it applies or may apply under the terms here of shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Party in exercising any right, power, or privilege hereunder, and no course of dealing between the Guarantor and the Guaranteed Party, shall operate as a waiver thereof; nor shall any single

or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The rights, powers, and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which the Guaranteed Party would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice of demand in similar or other circumstances or constitute a waiver of the rights of the Guaranteed Party to any other or further action in any circumstances without notice or demand.

8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and its successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Party.
9. Neither this Guaranty nor any provision hereof may be changed, waived, discharged, or terminated except upon written agreement of the Guaranteed Party and the Guarantor.
10. The Guarantor agrees that its liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference, or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise.
11. All notices and other communications hereunder shall be made at the addresses by hand delivery, by the next day delivery service effective upon receipt, by certified mail return receipt requested (effective upon scheduled weekday delivery day), by e-mail (effective on the date that it is received), or by telefacsimile (effective upon receipt of evidence, including telefacsimile evidence, that telefacsimile was received).

If to the Guarantor:

[Insert Guarantor]

If to the Guaranteed Party:

[Insert Company Name]

12. If claim is ever made upon the Guaranteed Party for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations and the Guaranteed Party repays all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement, or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement(s) or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Party hereunder for the amount so

- repaid or recovered to the same extent as if such amount had never originally been received by any such payee.
13. The Guarantor hereby certifies that it satisfies the Minimum Rating as defined in the Agreement(s).
 14. This Guaranty shall remain in full force and effect until all payments relating to Guaranteed Obligations have been fully and finally paid, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations entered into prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.
 15. The Guarantor represents and warrants that: (i) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (ii) no authorization, approval, consent, or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (iii) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditor's rights generally and by general principles of equity; and (iv) the execution, delivery, and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its or any law, regulation, or contractual restriction binding on it or its assets.
 16. This Guaranty and the rights and obligations of the Seller and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania. The Guarantor and Guaranteed Party jointly and severally agree to the exclusive jurisdiction of State and federal courts located in the Commonwealth of Pennsylvania over any disputes arising or relating to this Guaranty and waive any objections to venue or inconvenient forum. The Guarantor and Guaranteed Party each hereby irrevocably waive any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.
 17. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreements between the Guaranteed Party and the Guarantor with respect to subject matter hereof. The Guaranteed Party and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.

18. 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. This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed and delivered as of the date first above written to be effective as of the earliest effective date of any of the Agreement(s).

(GUARANTOR)
[Insert Guarantor]

Accepted and Agreed to:
[Insert Name]

By:

By: [Insert Company Name]

Name: [Insert Name]

Name: [Insert Name]

Title: [Insert Title]

Title: [Insert Title]

EXHIBIT F

LETTER OF CREDIT DOCUMENTATION

Sample Letter of Credit

[Insert Date]

Letter of Credit No. [Insert Credit No]

To: Beneficiary Name (“Beneficiary”)

1. We hereby establish in your favor this irrevocable transferable Letter of Credit (this “Letter of Credit”) for the account of [Insert Applicant Name] (the “Applicant”), in the aggregate amount of \$[Insert Amount], effective immediately and available to you at sight upon demand at our counters at [Insert Location] and expiring 364 days from date of issuance , unless terminated earlier or automatically extended, in accordance with the provisions hereof.
2. This Letter of Credit is issued at the request of the Applicant, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in paragraph 10 hereof.
3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (New York, NY time¹) on such Business Day to [Insert Bank] , [Insert Address] (i) a notice executed by you in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary. Authorized Officer shall mean President, Treasurer, any Vice President, or any Assistant Treasurer.
4. We hereby agree to honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. (New York, NY time) on the date of such drawing, if delivery of this requisite document is made prior to 11:00 AM (New York, NY time) on a Business Day pursuant to Paragraph 3 herein above, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made on or after 11:00 AM (New York, NY time) on any Business Day pursuant to Paragraph 3 herein above.

¹ If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a business day should be adjusted accordingly

5. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not exceeding three (3) Business Days following the date of receipt of the documents) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
6. This Letter of Credit will automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you of the drawings in an amount equal to the maximum amount available to be made hereunder, (ii) the date we receive from you a Certificate of Expiration in the form of Annex 3 hereto, or (iii) will be automatically extended without written amendment for successive additional one (1) year periods from the current or any future extended expiry date, unless at least ninety (90) days prior to such date of expiration, we give written notice to the Beneficiary by registered or certified mail, return receipt requested, or by overnight courier, at the address set forth above, or at such other address of which prior written notice has been provided to us, that we elect not to renew this irrevocable standby Letter of Credit for such additional one (1) year period.
7. As used herein:

“Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, New York and any day on which payments can be effected on the Fed wire system.

8. This Letter of Credit is assignable and transferable, in accordance with Annex 4, to an entity who you certify to us in the form of Annex 4, and we hereby consent to such assignment or transfer, provided that this Letter of Credit may not otherwise be amended or modified without consent from us, you and the Applicant, and except as otherwise expressly stated herein, is subject to the Uniform Customs and Practice for Documentary Credits – 2007 Revision, ICC Publication No. 600, or any successor publication thereto (the “UCP”). Any and all transfer fees, expenses, and costs shall be borne by the Applicant. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law. Transfers fees shall be borne by the Applicant.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified, or limited by reference to any document, instrument, or agreement referred to herein, except for Annexes 1 through 4 hereto and the notices referred to herein; and any such reference shall not be deemed to

incorporate herein by reference any document, instrument, or agreement except as set forth above.

9. We certify that as of [Insert Date] we [Insert Bank] satisfy the senior unsecured debt rating of “A” from Standard & Poor’s Rating Service or “A2” from Moody’s Investor Service Inc.
10. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. [Insert Credit No]. Partial drawings are permitted hereunder.
11. Faxed document(s) are acceptable. Presentation by fax must be made to fax number [Insert Fax] confirmed by telephone to [Insert Phone].
12. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or by any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this Letter of Credit to be closed for business on the last day of presentation, the expiration date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.
134. This original Letter of Credit has been sent to the Company located at [Insert Address] above (as per Applicant’s instructions). The aggregate amount paid to the Company during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of the Company. Acceptance or rejection of any amendments to this Letter of Credit must be signed by an Authorized Officer of the Company.

Very truly yours,

(Bank)

By: _____
Name: [Insert Name]
Title: [Insert Title]
Date: [Insert Date]

By: _____
Name: [Insert Name]
Title: [Insert Title]
Date: [Insert Date]

Annex 1 to Letter of Credit

DRAWING UNDER LETTER OF CREDIT NO. [Insert Credit No.]

[Insert Date]

To: [Insert Bank]
[Insert Address]

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under the above-referenced Letter of Credit in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. Pursuant to Paragraph 2 of the Letter of Credit No. [Insert Credit No.], dated [Insert Date], the undersigned is entitled to make a drawing under the Letter of Credit in the aggregate amount of \$[Insert Dollars], inasmuch as there is an Event of Default under any Agreement between the Applicant and us.
3. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

[Insert Beneficiary Name]

By: _____
Name: [Insert Name]
Title: [Insert Title]
Date: [Insert Date]

Annex 2 to Letter of Credit

DRAWING UNDER LETTER OF CREDIT NO. [Insert Credit No.]

[Insert Date]

ON [Business Day immediately succeeding date of presentation]

PAY TO: [Insert Beneficiary Name]

\$ [Insert Dollars]

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT
NO. [Insert Credit No.]

OF

[Insert Bank]

[Insert Address]

The [Insert Company]

By: _____

Name: [Insert Name]

Title: [Insert Title]

Date: [Insert Date]

Annex 3 to Letter of Credit

CERTIFICATE OF EXPIRATION
OF LETTER OF CREDIT NO. [Insert Credit No.]
[Insert Date]

To: [Insert Bank]
[Insert Address]

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above referenced Letter of Credit may be cancelled without payment. Attached hereto is said Letter of Credit, marked cancelled.

[Insert Beneficiary Name]

By: _____
Name: [Insert Name]
Title: [Insert Title]
Date: [Insert Date]

cc: [Insert Applicant Name]

Annex 4 to Letter of Credit

NOTICE OF TRANSFER
OF LETTER OF CREDIT NO. [Insert Credit No.]

[Insert Date]

To: [Insert Bank]
[Insert Address]

To Whom it may concern:
Re: Credit [Insert Credit No.]
Issued by: [Insert Name]
Advice No.: [Insert Advise No.]

For the value received, the undersigned Beneficiary hereby irrevocably transfers to:

[Insert Transferee Name]
(Name of Transferee)

[Insert Address]
(Address)

all rights of the undersigned Beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as Beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be directed solely to the transferee without necessity of any consent of or notice to the undersigned Beneficiary.

The advice of such Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

Enclosed is a certified check in the amount of \$ [Insert Amount] in payment of your transfer commission and in addition we agree to pay to you on demand any expenses that may be incurred by you in conjunction with this transfer.

Very truly yours,

[Insert Signature of Company]
(Signature of the Company)

The above signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

(Name of authenticating party)

[Insert Signature of Authenticating Party]

(Authorized signature of authenticating party)

Name: [Insert Name]

Title: [Insert Title]

EXHIBIT G

PERFORMANCE ASSURANCE AMOUNT

The Performance Assurance Amount will be based on 20% of the Total Notional Value of the Agreement; provided that the minimum Performance Assurance Amount shall be equal to the product of (a) \$100,000, (b) the Buyer's Percentage, (c) and the Facility Nameplate Rating. Additional details on the Performance Assurance Amounts are provided below.

The Annual Notional Value means the dollar amount resulting by calculating the product of (a) the Contract Price, (b) the Buyer's Percentage, (c) the Facility Nameplate Rating, (d) 8,760, and (e) 20% (an approximate expected capacity factor). The Total Notional Value is the sum of the Annual Notional Value over the remaining Contract Years. As an example, assume that the Contract Price is fixed at \$85/MWh for a 10-year contract term, the Facility Nameplate Rating is 25 MW, and the Buyer's Percentage is 100%. Then, the Annual Notional Value is

$$\$85.00/\text{MWh} \times 100\% \times 25 \text{ MW} \times 8,760 \text{ hours} \times 20\% = \$3,723,000$$

and, as of the beginning of the first Contract Year, the Total Notional Value is $10 \times \$3,723,000 = \$37,230,000$. In this example, the amount of Performance Assurance during the Contract Term is $20\% \times \$37,230,000 = \$7,446,000$. The amount of required Performance Assurance will decline annually during commercial operation, and the minimum Performance Assurance amount during the Contract Term is \$1,250,000 ($\$50,000 \times 25 \text{ MW}$).

EXHIBIT H
NOTICE INFORMATION

Any notices required under this Agreement shall be made as follows (as updated by the Parties from time to time):

If to Seller:

[Insert Company Name]
[Insert Name]
[Insert Address]
Telephone: [Insert Phone]
Facsimile: [Insert Fax]
Email: [Insert Email]

If to Buyer:

[Insert Company Name]
[Insert Name]
[Insert Address]
Telephone: [Insert Phone]
Facsimile: [Insert Fax]
Email: [Insert Email]

Copy to:

[Insert Company Name]
[Insert Name]
[Insert Address]
Telephone: [Insert Phone]
Facsimile: [Insert Fax]
Email: [Insert Email]