

***REDACTED EXECUTION VERSION***

**POWER PURCHASE AGREEMENT**

***between***

**YELLOW VIKING DEVELOPMENT ONE, LLC**

***and***

**CITY OF DENTON, TEXAS**

***dated as of***

**April 17, 2024**

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This document and any attachments or exhibits thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

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## POWER PURCHASE AGREEMENT

This Power Purchase Agreement (this “Agreement”), dated as of April 17, 2024 (the “Execution Date”), is between Yellow Viking Development One, LLC, a Texas limited liability company (“Seller”), and the City of Denton, Texas, a Texas Municipal Corporation and Home-Rule City, acting operationally through its Denton Municipal Electric Department (“Buyer”). Each of Seller and Buyer are referred to in this Agreement as a “Party”, and collectively as the “Parties”.

### RECITALS

1. Seller intends to construct, own, and operate a photovoltaic-powered generating facility with an anticipated nameplate capacity rating of [REDACTED] (the “Anticipated Nameplate Capacity”) in Hood, Somervell and Johnson Counties, Texas (as more particularly described in Exhibit A, and together with all materials, systems, structures, features and improvements necessary to produce electricity at such facility, including the Site and land rights, the “Facility”), which is anticipated to achieve Commercial Operation on or before [REDACTED] (the “Anticipated COD”); and

2. Seller desires to sell, and Buyer desires to purchase, a portion of the electricity produced by the Facility, together with all corresponding Environmental Attributes (defined below) available from the Facility and Capacity Attributes associated with the Facility, in each case, pursuant to the terms and conditions of this Agreement.

### AGREEMENT

In consideration of the foregoing, premises and the covenants contained in this Agreement, Buyer and Seller agree as follows:

### ARTICLE 1 DEFINITIONS

#### 1.1 Defined Terms

Unless otherwise required by the context in which it appears, terms used in this Agreement have the meanings set forth in this Section 1.1.

“Abandonment” means (a) the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement, or (b) if after commencement of the construction, testing, and inspection of the Facility, and prior to the Commercial Operation Date, there is a complete or substantial cessation of the construction, testing, and inspection of the Facility for 90 consecutive days by Seller and Seller’s contractors, but, in either case, only if such relinquishment or cessation is not caused by or attributable to a Delay Condition.

“AC Capacity” and the subscript use of “AC” mean, with respect to a solar photovoltaic generating facility, the peak alternating current Energy that a facility is capable of delivering, expressed in kW or MW.

“Affiliate” means, with respect to a Person, any Person that (a) Controls, directly or indirectly, such Person; (b) is Controlled, directly or indirectly, by such Person; or (c) is under common Control with such Person.

“Agreement” has the meaning set forth in the introductory paragraph of this Agreement. This document and any attachments or exhibits thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

“Anticipated COD” has the meaning set forth in the first recital paragraph.

“Anticipated Nameplate Capacity” has the meaning set forth in the first recital paragraph.

“Applicable Law” means with respect to a Person, collectively, any federal, state, or local law, treaty, franchise, rule, regulation (including ERCOT Protocols), standard, order, writ, judgment, injunction, decree, award, or determination of a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its properties are subject.

“Applicable RPS” means each of (i) the Compliance Standard and (ii) (iii) any Renewable Portfolio Standard adopted subsequent to the Commencement Date by the agreement of the Parties in accordance with Section 3.3(f).

“Bankrupt” means, with respect to a Person, such Person: (a) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization, or similar law; (b) has any such petition filed, or any such proceeding or cause of action commenced, against it if such petition, proceeding, or action is not withdrawn, discharged, dismissed, stayed, or restrained within 60 days following the filing or commencement thereof; (c) makes a general assignment of this Agreement for the benefit of its creditors; (d) otherwise becomes bankrupt or insolvent (however evidenced); (e) has a liquidator, administrator, receiver, trustee, conservator, or similar official appointed with respect to it or any substantial portion of its property or assets; or (f) admits in writing its general inability to pay its debts as they come due.

“Benchmark Quantity” means the quantity of Energy the Facility is capable of producing for each Contract Year, based upon 90% of the Buyer’s Share of the weather normalized production capability of the Facility, as more fully set out in Exhibit E attached hereto; *provided, however*, the Parties acknowledge and agree that Exhibit E is subject to being updated as of COD based upon the IE Report provided immediately prior to or at COD and as projected therein for each Contract Year of the Delivery Term.

“BOP/EPC Contract” means the engineering, procurement and construction agreement (whether styled as a balance of plant, balance of systems, engineering, procurement and construction, or other agreement) entered into by Seller for the engineering, procurement, and construction of the Facility.

“BOP/EPC Contractor” means the contractor retained by Seller under the BOP/EPC Contract.

“Business Day” means any day except a Saturday, Sunday or a Federal Reserve Bank holiday. With respect to each Party, a Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Central Prevailing Time.

“Buyer” has the meaning set forth in the introductory paragraph of this Agreement.

“Buyer Credit Support Amount” means (i) prior to the Commencement Date, [REDACTED] of Buyer’s Committed Share of the Anticipated Nameplate Capacity and (ii) subsequent to the Commencement Date, [REDACTED] of the Committed Capacity.

“Buyer Indemnitees” has the meaning set forth in Section 9.4(a).

“Buyer Operating Period Credit Support” has the meaning set forth in Section 6.2(b).

“Buyer Pre-COD Credit Support” has the meaning set forth in Section 6.2(a).

“Buyer’s Committed Share” means the amount, expressed as a percentage, equal to the Committed Capacity divided by the Anticipated Nameplate Capacity.

“Buyer Curtailment” means any curtailment of delivery of Energy for reasons unrelated to a Planned Outage, Forced Outage, a Force Majeure Event and/or a System Curtailment Order, including, for the avoidance of doubt, any reduction or cessation resulting from offers, bids, plans or schedules for the Facility submitted by the Seller’s QSE or the exercise of other rights with respect to the Facility by the Buyer’s QSE.

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce generation from the Facility by a specific amount of Committed Capacity for a specific duration of time. A Buyer Curtailment Order shall be issued by Buyer in accordance with Operating Procedures.

“Buyer Curtailment Period” means the period of time during which Seller reduces generation from the Facility pursuant to a Buyer Curtailment Order. The Buyer Curtailment Period shall be inclusive of the time required for the Facility, as applicable, to ramp down and ramp up.

“Buyer’s Future RPS Compliance Costs Acceptance” has the meaning set forth in Section 3.3(f)(ii).

“Buyer’s SCADA Requirements” has the meaning set forth in Section 4.4(b).

“Buyer’s Share” means the amount, expressed as a percentage, equal to the Committed Capacity divided by the Installed Capacity (without regard to any reduction in the Installed Capacity resulting from a Loss Event).

“Capacity” means the same as “capability” for electric power supply and refers to the Committed Capacity, expressed in MW, supplied to the electric transmission system under specified conditions for a given time interval.

“Capacity Attributes” means and includes (i) any current or future credit, allowance, or right associated with the Installed Capacity of the Facility which may be available to the Facility under the ERCOT Protocols, either through voluntarily participation in or by required compliance with, any current or future ERCOT System reliability planning and performance processes, procedures or programs (collectively, the “ERCOT Capacity Program”) pursuant to which any such credits, allowances or rights are apportioned to the Facility based on the actual availability of the Installed Capacity under the conditions specifically set out in any such ERCOT Capacity Program and (ii) to the extent any such ERCOT Capacity Program require performance by Buyer, as the owner and holder of all such credits, allowances, or rights apportioned to the Buyer’s Share of the Installed Capacity, all fines, penalties and costs assessed by ERCOT for a failure of Buyer to comply with the requirements of such ERCOT Capacity Program.

“Cash” means U.S. Dollars.

“Change in Law” means any change in or addition to any Applicable Law or ERCOT Protocols adopted on or after the Commencement Date.

[REDACTED]

“ [REDACTED] ”.

“Commencement Date” means the first day of the first calendar month immediately following the Commercial Operation Date.

“Commercial Operation” means that Seller has satisfied the Commercial Operation Conditions set out in Section 7.4(c).

“Commercial Operation Conditions” has the meaning set forth in Section 7.4(c).

“Commercial Operation Date” or “COD” means the later of (a) the date specified by Seller in a written notice delivered to Buyer in accordance with Section 7.4(c) as the date on which the Facility has commenced Commercial Operation, and (b) the date on which Commercial Operation is actually achieved.

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Prudent Electrical Practices, including, without limitation, electric system reliability and stability, state or other regulatory mandates relating to renewable Energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. “Commercially Reasonable” or “Commercially Reasonable Efforts” shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time.

“Committed Capacity” means [REDACTED].

“Committed Capacity Attributes” means the Capacity Attributes associated with the Committed Capacity.

“Committed Energy” means, with respect to an hour, Buyer’s Share of the Metered Output for such hour.

“Compliance Costs” [REDACTED]

“Compliance Costs Estimate” means Seller’s estimate of Compliance Costs for achieving compliance with an applicable Change in Law.

“Compliance Premium” has the meaning specified for such term in the Compliance Standard.

“Compliance Standard” means the renewable portfolio standard and related rules and regulations adopted by the Public Utility Commission of Texas (as amended from time to time) pursuant to which the Facility qualifies as a renewable energy resource able to create or have issued a credit or certificate based on the generation of Energy from such renewable source, which credit or certificate may be a solar

renewable energy credit, renewable energy credit or any other type of credit or certificate so designated under such Compliance Standard.

“Condemnation Event” means any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Facility, by any Governmental Authority or otherwise pursuant to Applicable Law.

“Condition Precedent” has the meaning set forth in Section Article 2(c).

“Confidential Information” means all non-public information of a Party related to this Agreement, including but not limited to financial information, pricing information, information regarding business activities and operations, business plans, information regarding employees, and other technical and business information, which Buyer or its Representatives and/or Seller or its Representatives furnishes to the other Party or its Representatives on or after the Execution Date, in whatever form or medium provided (including, without limitation, via oral communications), all of which shall be deemed to be the Confidential Information of the Party making such disclosure whether or not any such Confidential Information is clearly marked as such or that contains, reflects or is derived from the furnished information; *provided, however*, the term “Confidential Information” shall not include information which (i) is or becomes generally available to the public other than as a result of acts by the receiving Party or its Representatives to whom the receiving Party supplies the Confidential Information, (ii) was in the receiving Party’s or its Representative’s possession prior to the date it was disclosed to either Party by the other Party or its Representatives, (iii) is disclosed to the receiving Party by a third party which is not, to the receiving Party’s knowledge, prohibited from disclosing such information by a legal or fiduciary duty to the disclosing Party, or (iv) is independently developed by the receiving Party or any of its Representatives without the use of any Confidential Information. The Parties agree that the provisions of Item 9 of Exhibit B shall be applicable to all Confidential Information of the Seller.

“Contract Price” [REDACTED]

“Contract Quantity” has the meaning set forth in Section 7.5(b).

“Contract Year” means a period of one year, with the first such period commencing on and including the Commencement Date and continuing through but excluding the first anniversary of the Commencement Date, and with each successive period commencing immediately upon the conclusion of the prior period and continuing through but excluding the next anniversary of the Commencement Date.

“Control” means, when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise. Instances of “Controls”, “Controlled by”, and “under common Control with” have meanings correlative thereto.

“Costs” has the meaning set forth in Section 9.2(b).

“Credit Rating” means, with respect to a Person, on any date of determination, the respective rating then assigned to such Person’s senior unsecured long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody’s or Fitch, or if a rating is assigned by two or more of S&P, Moody’s and Fitch, the lower of all such assigned ratings.



“Credit Support” means Cash, a Letter of Credit, or a Guaranty.

“Credit Support Amount” means, (a) with respect to Seller, the Seller Pre-COD Credit Support or the Seller Operating Period Credit Support, whichever is then applicable, and (b) with respect to Buyer, Buyer Pre-COD Credit Support, the Buyer Operating Period Credit Support, or Buyer Credit Support Amount, whichever is then applicable.

“Day” or “day” means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Central Prevailing Time on any calendar day and ending at 24:00 hours Central Prevailing Time on the same calendar day.

“Day-Ahead” has the meaning set forth for such term in the ERCOT Protocols.

“Deemed Delivered Energy” means the amount of Energy (in MWh) that the Facility would have generated and delivered to the Delivery Point but did not generate or deliver to the Delivery Point during a Buyer Curtailment Period. The amount of Deemed Delivered Energy shall be determined using relevant Facility availability, weather and other pertinent data for the period of time during the Buyer Curtailment Period.

“Defaulting Party” means the Party with respect to which an Event of Default has occurred and is continuing.

“Delay Condition” has the meaning set forth in Section 7.2(c).

“Delay Liquidated Damages” means the monthly liquidated damages due from Seller to Buyer for failure to meet the Guaranteed Commercial Operation Date not due to a Delay Condition, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Delivered Energy” means Metered Output associated with the Committed Capacity and delivered to Buyer at the Delivery Point.

“Delivery Point” means with respect to Energy, the ERCOT North Hub, and with respect to any other Product, the point at or method by which such Product is delivered to Buyer.

“Delivery Term” has the meaning set forth in Section Article 2(b).

“Early Termination Right” has the meaning set forth in Section 7.3(c)(ii).

“Economic Loss” has the meaning set forth in Section 9.2(b).

“Effective Date” has the meaning set forth in Section Article 2(b).

“Eligible Guarantor” means, with respect to a Party, (a) a Qualified Issuer or (b) an Affiliate of such Party that has an Investment Grade Credit Rating.

“Eligible Renewable Resource” means an eligible “renewable energy resource” (as defined in the Compliance Standard RPS) under the Compliance Standard.

“Emergency” means that an “Emergency Condition” has been declared as provided in the ERCOT Protocols. For the avoidance of doubt, each of SCED dispatch signals, curtailment flags, setpoints or manual dispatches by Seller’s or Buyer’s QSE, are not considered an Emergency.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, generated by the Facility, as measured by EPS Meter at the Interconnection Point.

“Environmental Attributes” means an aspect, claim, characteristic or benefit, howsoever entitled, associated with the generation of a quantity of Energy by a renewable energy project, other than the electric energy produced, and that is capable of being measured, verified or calculated, including any fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, offsets and allowances resulting from the purchase, generation or use of energy from such project or the avoidance of any emission of any gas, chemical or other substance to the air, soil or water attributable to such energy generation or arising out of any present or future requirements of Applicable Law. Without limiting the foregoing, Environmental Attributes include the following attributes associated with a particular megawatt hour of generation by a renewable energy project: such project’s use of a particular renewable energy source; avoided NOx, SOx, CO2 or other greenhouse gas emissions; avoided water use (but not water rights or other rights or credits obtained pursuant to requirements of Applicable Law in order to site and develop the Facility itself); and such other attributes as may be defined under the Compliance Standard (including RECs), or as agreed by the Parties. Environmental Attributes do not include any Energy; Facility Attributes; Capacity Attributes or any production, investment or other Tax credits, Tax deductions, Tax exemptions, or other direct third-party subsidies; filed rates; or feed-in tariffs for generation of electricity by a renewable energy project.

“EPS Meter” means an “ERCOT-Polled Settlement Meter” as such term is defined in the ERCOT Protocols.

“ERCOT” means the Electric Reliability Council of Texas, Inc.

“ERCOT Capacity Program” has the meaning set out in the definition of Capacity Attributes.

“ERCOT Protocols” means the rules, protocols, procedures and standards from time to time promulgated by ERCOT and with respect to which participants in the ERCOT market are required to comply, including the ERCOT Nodal Protocols and the associated “market guides”, “business practice manuals”, and “other binding documents”.

“Event of Default” has the meaning set forth in Section 9.1(a).

“Excused Condition” means any one or more of the following: (i) the occurrence of a Force Majeure Event, (ii) the Non-Claiming Party’s breach of its obligations under this Agreement, (iii) the issuance to and receipt by Seller or Seller’s QSE of a System Curtailment Order, (iv) if the Claiming Party is the Seller, a Buyer Curtailment Order, or if Buyer is the Claiming Party, a Seller Curtailment, (v) Planned Outages, (vi) Forced Outages, or (vii) Emergencies not otherwise the subject of any System Curtailment Order. For purposes of this definition, (A) the “Claiming Party” shall be the Party claiming the occurrence of an Excused Condition and (B) the “Non-Claiming Party” shall be the Party not claiming the occurrence of an Excused Condition in the event such Excused Condition is claimed.

“Execution Date” has the meaning set forth in the introductory paragraph of this Agreement.

“Existing Change in Law” has the meaning set forth in Section 11.14(d).

“Extension Notice” has the meaning set forth in Section Article 2(b).

“Extension Term” has the meaning set forth in Section Article 2(b).

“Facility” has the meaning set forth in the first recital paragraph.

“Facility Attributes” means any of the services identified by either a Transmission Provider in its transmission tariff or by ERCOT in the ERCOT Protocols as “ancillary services”, including energy imbalance services, generation imbalance services, regulation and frequency response services, reactive supply services, voltage control services, inadvertent energy flow services, control area services, system integration services, operating spinning reserve services, and operating supplemental reserve services. For the avoidance of doubt, Facility Attributes does not include any Environmental Attributes or Capacity Attributes.

“Facility Lender” means any Person (including any trustee, arranger or agent on behalf of such Person) lending money or extending credit to Seller in connection with the development, construction, ownership, operation or maintenance of the Facility, including any refinancing thereof.

“FCPA” has the meaning set forth in Section 11.2(a).

“Fed Funds Rate” means with respect to any day, the rate for that day opposite the caption “Federal Funds (Effective)” in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System, but not less than 0%.

“Fitch” means Fitch Ratings, Inc. or its successor, or in the event that there is no such successor, a nationally recognized credit ratings agency.

“Force Majeure Event” has the meaning set forth in Section 8.1(b).

“Forced Outage” means any unplanned reduction or suspension of the electrical output from the Facility or unavailability of the Facility in an amount greater than [REDACTED] of the Committed Capacity in response to a mechanical, electrical or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction, or any other unavailability of the Facility for maintenance or repair that is not a Planned Outage, due to System Curtailment or a Buyer Curtailment Order, or a Force Majeure Event.

“Future Environmental Attributes” has the meaning set forth in Section 3.3(f)(i).

“Future RPS” has the meaning set forth in Section 3.3(f)(i).

“Future RPS Compliance Costs” has the meaning set forth in Section 3.3(f)(i).

“Future RPS Notice” has the meaning set forth in Section 3.3(f)(i).

“GEP Damages” has the meaning set forth in Exhibit G.

“GEP Failure” means Seller’s failure to produce Delivered Energy in an amount equal to or greater than the Guaranteed Energy Production amount for the applicable Performance Measurement Period.

“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, political subdivision thereof, or regulatory or quasi-regulatory authority, including ERCOT, NERC, TRE, and any municipality, township or county, or taxing authority, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any of the foregoing.

“Governmental Charges” has the meaning set forth in Section 5.4(a).

“Guaranteed Commercial Operation Date” means [REDACTED], as such date may be extended pursuant to Section 7.2(c).

“Guaranteed Energy Production” or “GEP” has the meaning set forth in Section 7.5(a).

“Guaranty” means a guaranty issued by an Eligible Guarantor substantially in such form as may be reasonably acceptable to the Party for whose benefit the guaranty is being issued.

“Guaranty Default” means, with respect to a Guaranty, (a) the issuer of such Guaranty no longer qualifies as an Eligible Guarantor, (b) the issuer of such Guaranty has failed to comply with any of its material covenants or obligations under such Guaranty and such failure has not been remedied within 10 days following Guarantor’s or Pledgor’s receipt of notice of such failure, (c) the issuer of such Guaranty has disaffirmed, disclaimed, rejected, or challenged the validity of such Guaranty, whether in whole or in part, (d) any representation or warranty made by the issuer under such Guaranty is false or misleading in any material respect when made or when deemed made or repeated and such failure, if capable of being remedied, is not remedied within 10 days following the Guarantor’s or Pledgor’s receipt of notice, (e) the

issuer of such Guaranty has become Bankrupt, or (f) such Guaranty terminates or otherwise ceases to be in full force and effect while such Guaranty is required to be maintained pursuant to the terms of this Agreement.

“IE Report” means a production analysis report as to the operation of the Facility and volume of Energy generated by the Facility estimated by the Independent Engineer projected for each Contract Year of the Term, which IE Report is to be provided by the Independent Engineer to each of Seller and Buyer no later than 15 Business Days following the Commercial Operation Date.

“Increased Contract Price Cap” has the meaning set forth in Section 11.14(a).

“Indemnifying Party” means the Party responsible for indemnifying and Indemnatee for its Losses under Section 9.4.

“Indemnatee” has the meaning set forth in Section 9.4(b).

“Independent Engineer” means [REDACTED] or any other independent engineering firm or individual under contract with Seller to verify (i) the performance of the Facility with the specification of the engineering, procurement and construction contractor of the Seller and any Facility Lender or (ii) as applicable, Compliance Costs associated with any Change in Law occurring during the Term.

“Installed Capacity” means the total nameplate AC Capacity of the Facility, as of a given moment, taking into account the operating condition of the Facility, the Facility’s auxiliary energy requirements, solar irradiance, temperature and relative humidity conditions, losses and other relevant factors at such time, without deduction for any capacity affected by a Loss Event, in each case as measured at the Interconnection Point.

“Interconnection Agreement” means that certain ERCOT Standard Interconnection Agreement dated as of [REDACTED] entered into between Seller and Transmission Provider pursuant to which Seller and the Transmission Provider set forth the terms and conditions for interconnection of the Facility to the Transmission System, as amended, restated, supplemented, or otherwise modified from time to time.

“Interconnection Point” means the Oncor Comanche Peak Switch – Timberview Switch 345 kV transmission line.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate published in [REDACTED] and (b) the maximum rate permitted by Texas Government Code Section 2251.025.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as the same may be amended from time to time or superseded.

“Investment Grade Credit Rating” means a Credit Rating equal to or better than BBB- from S&P, Baa3 from Moody’s, and/or BBB- from Fitch.

“Investment Tax Credits” and “ITC” mean investment tax credits under Section 48 of the Internal Revenue Code.

“kW” means a kilowatt of electric capacity.

“kWh” means a kilowatt-hour of Energy.

“Letter of Credit” means a non-transferrable, irrevocable standby letter of credit issued by a Qualified Issuer in substantially in the form attached hereto as Exhibit H, with such modifications thereto as the Secured Party and/or Qualified Issuer may in its reasonable discretion require.

“Letter of Credit Default” means, with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (a) the issuer of the Letter of Credit ceases to be a Qualified Issuer; or (b) the issuer of the Letter of Credit becomes Bankrupt or any event analogous to an event specified in the definition of the term “Bankrupt” occurs with respect to the issuer of the Letter of Credit.

“Loss Event” means (a) any property casualty, loss, or other similar event that materially affects the Facility due to a Force Majeure Event or (b) any Condemnation Event.

“Losses” has the meaning set forth in Section 9.4.

“LSE” has the meaning of such term in the ERCOT Protocols.

“Market Disruption Event” means (i) the permanent disappearance or discontinuance of the announcement or publication of the Settlement Point Price at the Settlement Hub, (ii) the occurrence of a material change in the formula for or method for determining the Settlement Point Price at the Settlement Hub, or (iii) a material change in the content or composition of the Settlement Point Price at the Settlement Hub. For purposes of the foregoing, a “Market Disruption Event” does not include changes made by ERCOT to the electrical busses included within the Settlement Hub in accordance with the ERCOT Protocols.

“Market Rate” means a value (expressed in \$/MWh) calculated as the simple average of the 15-minute RTSPP for hours ending 10-17 in each such day, as published by ERCOT, for settlement pricing at the Settlement Hub.

“Maximum GEP Damages Cap” has the meaning set out in Exhibit G.

“Maximum Pre-COD Damages Cap” means,



“Meter” means a meter associated with the Facility’s Metering Facilities.

“Metered Output” means, with respect to an hour, the amount of Energy generated by the Facility, expressed in MWh, and delivered to the Interconnection Point, as measured by the Facility’s Metering Facilities.

“Metering Facilities” means the metering and data processing equipment needed for the registration, recording and transmission of information regarding Committed Energy installed and owned, operated and maintained in accordance with the terms of the Interconnection Agreement, the applicable rules of the Transmission Provider and the ERCOT Protocols, and shall include the EPS Meter.

“Moody’s” means Moody’s Investors Service, Inc. or its successor, or in the event that there is no such successor, a nationally recognized credit ratings agency.

“MW” means 1,000 kW of electric capacity.

“MWh” means 1,000 kWh of electric energy.

“NERC” means the North American Electric Reliability Corporation, or its successor.

“Non-Defaulting Party” has the meaning set forth in Section 9.2(a).

“Operating Procedures” has the meaning set forth in Section 7.6(b).

“Outside Commercial Operation Date” means [REDACTED] following the Guaranteed Commercial Operation Date, as such date may be extended on a day-for-day basis in the event the Guaranteed Commercial Operation Date is delayed in accordance with Section 7.2(c).

[REDACTED]

“Party” and “Parties” have the meanings set forth in the introductory paragraph of this Agreement.

“Performance Measurement Period” has the meaning set forth in Section 7.5(a).

“Permits” means, collectively, all federal, state or local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Facility.

“Permitted Transferee” means a Person (a) that is a Facility Lender in connection with the exercise by such Person, or an agent acting on behalf of such Person, of remedies as a secured creditor of Seller, or (b) that (i) individually or together with its Affiliates owns or operates, or has engaged a Person to operate the Facility that owns or operates, in either case, utility-scale renewable electric generating facilities with an aggregate nameplate capacity of at least 100 MW<sub>AC</sub> and (ii) either (A) is, Controls, is Controlled by or under common Control with, a Person with a consolidated net worth (including uncalled capital commitments) of at least \$100,000,000 or (B) is a financial sponsor, private equity fund, or other similar investor that owns and manages assets valued in excess of \$100,000,000 (including uncalled capital commitments).

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

“Planned Outage” means the removal of all or a portion of the Facility from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the period of the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Facility consistent with Prudent Electrical Practices, (b) cannot be reasonably conducted during the Facility’s operations, and (c) causes the generation level of the Facility to be reduced by at [REDACTED] of the Facility’s Installed Capacity.

“Pledgor” means Buyer or Seller, as applicable, in its capacity as the Party that has transferred or is required to transfer Credit Support to the other Party in its capacity as the Secured Party.

“Products” means the Committed Energy, Committed Capacity Attributes and the Environmental Attributes associated with such Committed Energy from time to time available from, or that may be generated by, the Facility; *provided, however*, “Products” shall not include any Facility Attributes, whether existing as of the Commencement Date or which may later be designated or implemented by a Transmission Provider in its transmission tariff or by ERCOT under the ERCOT Protocols.

“Prudent Electrical Practice” means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the ERCOT that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all Applicable Laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediately preceding sentence.

“Qualified Issuer” means a major U.S. commercial bank or a U.S. branch office of a foreign bank that has a Credit Rating of “A-” or better by S&P and “A3” or better by Moody’s and has assets of at least \$10,000,000,000 or a bank mutually agreed by both Parties.

“Qualified Scheduling Entity” or “QSE” has the meaning set forth in the ERCOT Protocols and means the entity that provides the Facility scheduling, bidding services and financial settlement with ERCOT for and on behalf of Seller.

“REC Transfer Deadline” has the meaning set forth in Section 3.3(d).

“Reliability Entity” may include, without limitation, NERC, ERCOT, the Transmission Provider, a balancing authority, a regional transmission organization, an independent system operator or any other entity that has, or that may have in the future, (a) responsibility over the reliability of the bulk power system and (b) by virtue of such responsibility, the legal authority to affect the operations of the Facility.

“Renewable Energy Credit” and “REC” have the meaning set forth for the term “renewable energy credit” in Section 25.173 of Title 16 of the Texas Administrative Code. RECs are accumulated on a MWh basis and one REC represents one MWh of Energy.



“Renewable Portfolio Standard” means any standard, program, model or guideline established (whether by any Governmental Authority or other Person) and enacted or implemented by a state or other Governmental Authority into an Applicable Law pursuant to which there is a stated policy, requirement or obligation to obtain electricity from clean or renewable resources, such as wind or solar, in order to meet emission reduction or clean energy thresholds.

“Representatives” means, as to any Person, such Person’s Affiliates and each of its and its Affiliates’ respective directors, officers, employees, agents, representatives, consultants, advisors (including financial advisors, attorneys and accounts or consultants) and investors.

“Reporting Month” has the meaning set forth in Section 7.4(d).

“S&P” means S&P Global Ratings, a division of S&P Global Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

“Secured Party” means Buyer or Seller, as applicable, in its capacity as the Party to which Credit Support has been transferred, or is required to be transferred, by the other Party in its capacity as the Pledgor.

“Security-Constrained Economic Dispatch” or “SCED” has the meaning set forth in the ERCOT Protocols.

“Seller” has the meaning set forth in the introductory paragraph of this Agreement.

“Seller Curtailment” means any curtailment of Energy from the Committed Capacity resulting from (a) a failure of Seller’s interconnection facilities that causes the Facility to be disconnected, suspended or interrupted, in whole or in part, or (b) Seller’s default under this Agreement or the Interconnection Agreement.

“Seller Indemnitees” has the meaning set forth in Section 9.4(b).

“Seller Operating Period Credit Support” has the meaning set forth in Section 6.1(b).

“Seller Pre-COD Credit Support” has the meaning set forth in Section 6.1(a).

“Seller’s Future RPS Compliance Costs Notice” has the meaning set forth in Section 3.3(f)(i).

“Settlement Hub” means ERCOT North Hub.

“Settlement Point Price” has the meaning set forth for such term in the ERCOT Protocols.

“Site” means the real property on which the Facility is to be built and located, as more particularly described in Exhibit A.

“Solar Panels” means the photovoltaic cell modules and associated inverters that are or are to be incorporated into the infrastructure of the Facility.

“System Curtailment” means any curtailment of delivery of Energy as the result of any of the following: (i) an Emergency, (ii) an action taken by the Reliability Entity to decrease the production of the Facility’s Energy output to resolve transmission constraints, and (iii) any other order or directive of ERCOT

or the Transmission Provider, which order or directive may be directly communicated to Seller or Seller's QSE by a Reliability Entity.

"System Curtailment Order" means the instruction from a Reliability Entity to the Seller or Seller's QSE to reduce generation from the Facility by the amount, and for the period of time set forth in such order, due to a System Curtailment.

"Tax Equity Investor" means a Person that acquires a direct or indirect interest in Seller as a part of a transaction to ensure that the Facility is owned, at least in part, by a Person able to utilize the tax benefits or grants in lieu of tax benefits associated with holding an ownership interest in the Facility (including any subsequent transferees of any such Persons).

"Taxes" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

"Term" has the meaning set forth in Section Article 2(b).

"Termination Amount" has the meaning set forth in Section 9.2(b).

"Tracking System" means, (i) as of the Commencement Date the Texas REC Tracking System maintained by ERCOT for the purpose of tracking the creation, trading, and retirement of RECs in connection with the Applicable RPS and (ii) any tracking system or registry associated with or approved for use by the Parties in relation to any Renewable Portfolio Standard adopted subsequent to the Commencement Date by the Parties in accordance with Section 3.3(f).

"Transmission Provider" means Oncor Electricity Delivery Company, LLC, or any successor entity.

"Transmission Provider Tariff" means the Open Access Transmission Tariff for the Transmission Provider, as in effect at such time, including any documents and protocol adopted by the Transmission Provider, including any exhibits or attachments referenced therein, that contain the scheduling, operating, planning, reliability and settlement policies, rules, guidelines (including the guidelines approved by the Transmission Provider describing the reliability standards for the Transmission Provider), procedures, standards and criteria of the Transmission Provider.

"Transmission System" means the facilities used for the transmission of electricity owned and operated by the Transmission Provider, including any modifications or upgrades made to such facilities.

"TRE" means the Texas Reliability Entity, Inc., or its successor entity.

## 1.2 **Standards of Interpretation**

For purposes of this Agreement: (a) terms defined in the singular include the plural and vice versa; (b) references to “Articles,” “Sections,” “Exhibits,” and “Attachments” are to articles or sections of, or exhibits or attachments to, this Agreement; (c) all references to a particular entity include that entity’s successors and permitted assigns; (d) the words “herein,” “hereof,” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection; (e) all accounting terms not specifically defined in this Agreement are to be construed in accordance with generally accepted accounting principles in the United States, consistently applied; (f) references to this Agreement include the appendices, Exhibits, Attachments, annexes, schedules, and other attachments to this Agreement, as the same may be amended, supplemented, replaced, restated, or otherwise modified from time to time; (g) terms used in the masculine include the feminine and neuter and vice versa; (h) the word “including,” when used in this Agreement, means including without limitation; (i) references to “Dollars” and the symbol “\$” mean U.S. Dollars; (j) references to any Governmental Authority include any successor to its applicable functions; and (k) references to any Applicable Law, including the Internal Revenue Code, or to ERCOT, or the TRE include any amendments, successor, or replacement thereto.

## **ARTICLE 2 TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS**

### **2.1 Term; Delivery Term; Condition Precedent**

(a) This Agreement shall be effective on the Execution Date as to each of the provisions contained in this Article 2, Article 10 and Article 11 only.

(b) On the date upon which Seller has satisfied the Condition Precedent (the “Effective Date”), the balance of the terms and conditions of this Agreement shall become effective and, unless earlier terminated pursuant to the terms of this Agreement or by agreement of the Parties, will terminate at the end of the fifteenth (15<sup>th</sup>) Contract Year (the “Term”). The delivery term of this Agreement (the “Delivery Term”) includes the period from and including the Commencement Date to and continuing through the end of the Term. Buyer shall have the option to extend the Term up to a maximum of twelve (12) months (the “Extended Term”) by providing written notice of the exercise of such option to Seller not less than six (6) months prior to the end of the Term (the “Extension Notice”). If the Extension Notice is timely delivered to Seller, this Agreement shall be extended through the Extended Term and the Delivery Term continued until the last day of the Extension Term.

(c)



For the avoidance of doubt, in no event shall the date upon which the Condition Precedent is satisfied alter or otherwise affect the Anticipated COD, the Guaranteed Commercial Operation Date, or the Outside Commercial Operation Date. In the event Seller has not satisfied the Condition Precedent on or prior to the Outside CP Satisfaction Date, either Party may terminate this Agreement by providing the other Party with no less than ten (10) Business Days’ written notice of its

intention to terminate this Agreement. Upon termination of this Agreement in accordance with the terms of this Section Article 2(c), neither Party shall have any obligations or liabilities to their other Party and this Agreement shall be deemed to have been terminated in all respects and to be null and void.

## 2.2 **Effect of Termination; Survival of Obligations**

(a) **Generally.** Except as set forth in Section 2.2(b) or as otherwise set forth in this Agreement, following termination of this Agreement neither Party will have future or further rights or obligations under this Agreement.

(b) **Survival of Obligations.** In addition to any other provisions of this Agreement that by their terms survive the termination of this Agreement, the following rights, obligations and provisions survive the termination of this Agreement:

- (i) the provisions of this Section 2.2(b);
- (ii) the obligations of a Party to the other Party to pay any amounts or to perform any duties or obligations that accrued or arose prior to, that directly resulted from, or that contemplate performance following, the termination of this Agreement;
- (iii) the payment related provisions set forth in Section 5.2;
- (iv) the limitation of liability provisions set forth in Section 9.3 and the warranty limitations set forth in Section 10.3;
- (v) the indemnity obligations set forth in Section 9.4 (which survive through the conclusion of the statute of limitations period applicable to any potential third party claim); and
- (vi) the provisions of Article 11.

## **ARTICLE 3 PURCHASE AND SALE**

### 3.1 **Purchase and Sale of Product**

(a) **Generally.** In accordance with the terms and conditions of this Agreement, commencing on the Commencement Date and continuing throughout the Term, Seller shall sell, and Buyer shall purchase all of the Committed Energy, and Seller shall deliver at the Delivery Point, and Buyer shall accept from Seller at the Delivery Point, all of the Committed Energy less any transmission losses between the Interconnection Point and the Delivery Point. In addition to the foregoing, during the Delivery Term, Seller shall sell and deliver or otherwise make available to Buyer, and Buyer shall receive or otherwise have the rights to, all Environmental Attributes associated with the Committed Energy; *provided, however*, notwithstanding anything to the contrary in this Agreement, all Facility Attributes available from or associated with the Facility shall at all times be retained by Seller solely for Seller's account. Buyer shall pay to Seller an amount equal to the Contract Price multiplied by the Committed Energy. The Contract Price paid for the Committed Energy is the full compensation due to Seller for the Products, including the

Environmental Attributes associated with such Committed Energy and the Committed Capacity Attributes to which Buyer has rights to under this Agreement.

(b) Physical Delivery. Buyer hereby directs Seller to deliver the Committed Energy to the Buyer at the Delivery Point (less any transmission losses between the Interconnection Point and the Delivery Point). Buyer will reimburse Seller for any costs or charges incurred due to Buyer's failure to confirm or otherwise accept a schedule from Seller.

### 3.2 Delivery Point

(a) Allocation of Costs and Risks. Other than as expressly provided for in this Agreement, Seller is responsible for all costs and charges imposed on or associated with the Products or the delivery of the Products hereunder up to the Delivery Point. Buyer is responsible for all costs and charges imposed on or associated with the Products, or its receipt, at and after the Delivery Point.

(b) Title and Risk of Loss. Title to, and risk of loss related to, the Committed Energy delivered to Buyer transfers from Seller to Buyer at the Delivery Point. Title to all Environmental Attributes associated with the Committed Energy transfers to Buyer as soon as reasonably practicable following the transfer of such RECs to Seller's account in accordance with the Compliance Standard and the rules of the registry through which such RECs are to be transferred to Seller's account. Title transfer of RECs to Buyer will occur upon the transfer of RECs into the Tracking System account designated by Buyer in accordance with the rules established by the Tracking System. Title to the Committed Capacity Attributes transfers to the Buyer at the Commencement Date for the entirety of the Term of this Agreement and the Parties agree to undertake their respective obligations, if any, under the ERCOT Capacity Program to reflect the transfer of title from Seller to Buyer of all such Committed Capacity Attributes.

### 3.3 Environmental Attributes

(a) Generally. Throughout the Delivery Term, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all rights, titles and interest in and to the Environmental Attributes associated with the Committed Energy.

(b) No Assignment. Seller shall not assign, transfer, convey, encumber, sell, or otherwise dispose of, whether on a spot or forward basis or otherwise, any portion of the Environmental Attributes associated with the Committed Energy generated during the Delivery Term to any Person other than Buyer.

(c) RPS Compliance. Prior to the Commercial Operation Date, or by the earliest date allowed under each Applicable RPS, Seller shall take all necessary steps, including making or supporting timely filings, including filings with ERCOT to certify the Facility in accordance with, or otherwise cause the Facility to qualify under, the requirements of the Applicable RPS. Seller shall (i) subject to Section 11.14, maintain the certification or registration of the Facility with ERCOT and otherwise cause the Facility and the RECs generated by the Facility to qualify under each Applicable RPS throughout the Delivery Term, and (ii) provide such certifications or attestations to Buyer as are reasonably necessary to verify that all RECs attributable to the Committed Energy have been transferred to Buyer. The failure of the Facility or the RECs generated by the Facility for any reason to qualify under an Applicable RPS, whether as a result of a breach by Seller of its obligations under this Agreement, the repeal or other termination of an Applicable RPS, the application of Section 11.14 or otherwise, does not excuse Seller's obligation to deliver

to Buyer, or limit Buyer's right to receive all of the RECs then associated with or available based on the Committed Energy generated during the Delivery Term.

(d) Amendments to Applicable RPS. For all purposes of this Agreement, any amendment or modification to any Applicable RPS occurring after the Commencement Date shall be deemed to be a Change in Law under Section 11.14 hereof and shall be subject to the provisions of that Section.

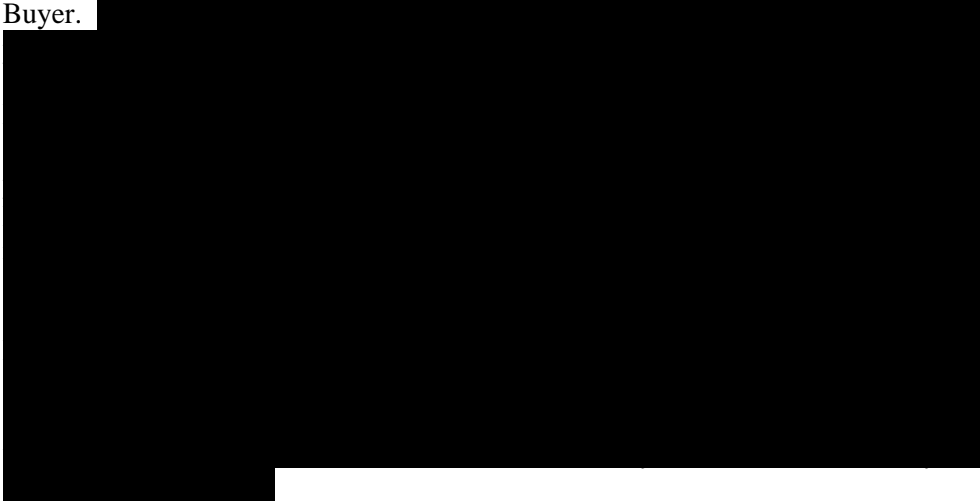
(e) REC Tracking System.

- (i) Prior to the Commercial Operation Date, Seller shall establish an account with the Tracking System for the purpose of receiving and transferring to Buyer the RECs associated with the Committed Energy. Seller shall in accordance with the rules and procedures of the Tracking System transfer from Seller's account to Buyer's designated account all RECs associated with the Committed Energy promptly, and in any event within 15 Business Days, following the creation date for such RECs (the "REC Transfer Deadline"). If either Party receives notice from the administrator of the Tracking System that a transfer of RECs will not be completed, the Parties shall promptly confer and take such actions as may be necessary to cure any defects in the proposed transfer so that the transfer can be completed. Seller and Buyer acknowledge that a transfer of RECs by Seller will be considered timely if properly initiated by Seller on or before the REC Transfer Deadline, but that the obligations of the Parties hereunder to consummate such transfer by Seller and acceptance of such transfer will not be satisfied until and unless such RECs are received into Buyer's designated account in accordance with the applicable requirements of the Tracking System. In the event that the Tracking System is not available for the transfer of RECs, the Parties may by mutual agreement designate a replacement tracking system (which, upon agreement of the Parties, will thereafter be the Tracking System for purposes of this Agreement) or, in the absence of such agreement, Seller shall execute and deliver to Buyer such attestations and other supporting documentation necessary or reasonably requested by Buyer to evidence the transfer to Buyer of, and Buyer's rights with respect to, all RECs associated with the Committed Energy.
- (ii) Prior to the Commencement Date, Buyer shall establish an account with the Tracking System for the purpose of receiving the RECs associated with the Committed Energy being transferred by Seller. Buyer will, at its own cost, take the actions necessary to receive and verify the transfer of RECs under the Tracking System, including the costs of any audit or other verification of such transfer. Buyer will be responsible for all fees and charges assessed against Buyer associated with receiving the RECs.

(f) Future Environmental Attributes.

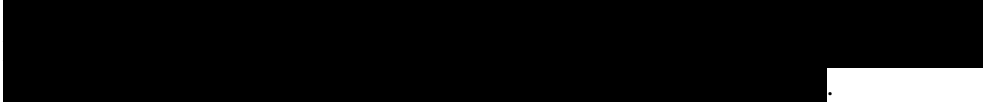
- (i) To the extent Environmental Attributes other than RECs are available under the Applicable RPS, the provisions of Section 3.3(d) above will apply to such other Environmental Attributes with the same effect. If, however, at any time during the Delivery Term Environmental Attributes will or have become available in the market under a Renewable Portfolio Standard other than the then Applicable RPS (a

“Future RPS”), Buyer may notify Seller of Buyer’s intent to receive such Environmental Attributes (the “Future Environmental Attributes” and such notice being the “Future RPS Notice”), including in such Future RPS Notice the nature of the Future Environmental Attributes and the Future RPS under which the Facility is to qualify for the generation, monitoring and tracking of Future Environmental Attributes based upon the generation of the Committed Energy, as well as any tracking system applicable to the foregoing (a “Future Tracking System”) and Seller’s subsequent transfer of such Future Environmental Attributes from Seller to Buyer.



(ii)



- 
- (iii) It is agreed by the Parties that the process set out in this Section 3.3(f) shall be applied at any time during the Delivery Term Environmental Attributes will or have become available in the market under a Future RPS that is other than the then Applicable RPS. For the avoidance of doubt, a Future RPS shall not (a) be or qualify as a Change in Law under the provisions of Section 11.14 (except to the extent any such Future RPS is or becomes an Applicable RPS), and (b) be or qualify as an Applicable RPS, unless otherwise specifically agreed to in writing by and between Seller and, as applicable, Buyer and all other third-parties who are purchasing Environmental Attributes associated with the Energy generated from the Facility.

(g) Reporting Rights. Seller shall not report to any Person, or authorize any other Person to report, that the Environmental Attributes associated with the Committed Energy generated during the Delivery Term belong to anyone other than Buyer, and Buyer may report under any program that such attributes purchased hereunder belong to it. If Buyer determines that Seller or any other Person has made a written statement, written claim, or other written communication that could reasonably be expected to adversely affect Buyer's right to claim the exclusive ownership of or reporting rights associated with the Environmental Attributes purchased under this Agreement (unless such adverse effect results from any action or inaction of Buyer), Seller shall promptly following receipt of Buyer's written request take such Commercially Reasonable actions as may be necessary or that Buyer may reasonably request in order to retract or otherwise correct such written statement, written claim, or other written communication or to cause such written statement, written claim, or other written communication to be retracted or otherwise corrected, as applicable.

### 3.4 Facility Attributes

The Parties acknowledge and agree that all Facility Attributes, whether existing as of the Commencement Date or thereafter implemented, authorized or otherwise recognized in the Transmission Provider Tariff or under the ERCOT Protocols, are and shall at all times during the Term be retained by Seller and only Seller shall have the right to all of such Facility Attributes. For the avoidance of doubt, Facility Attributes shall not be deemed for any purposes to be part of the Environmental Attributes.

### 3.5 Tax Credits

All ITCs and any other current or future Tax credits, Tax deductions, or Tax benefits or other financial incentives applicable to the Facility are retained by Seller, the owners of the Site, or both, as applicable. For the avoidance of doubt, Tax credits, Tax deductions, or Tax benefits shall not be deemed for any purposes to be part of the Environmental Attributes.



## **ARTICLE 4 METERING**

### **4.1 Metering Requirements**

The amount of Energy to be transferred from Seller to Buyer at the Delivery Point will be determined based on measurements made by the Facility's Metering Facilities (including the EPS Meter) to determine the amount of Committed Energy at the Delivery Point. Seller shall ensure that the Metering Facilities are selected, provided, installed, owned, maintained, and operated in accordance with the requirements of the Interconnection Agreement and the Transmission Provider Tariff at Seller's or the Transmission Provider's sole cost and expense, as applicable, as well as in accordance with the ERCOT Protocols. Seller shall exercise Commercially Reasonable Efforts to ensure that the Meters are tested by the Transmission Provider at least annually. Seller shall provide reasonable prior notice to Buyer of the time and date of each test of the Meters, and shall permit Buyer to be present at such tests.

### **4.2 Meter Inaccuracies and Retroactive Adjustments**

If a Meter fails to register, or if the measurement made by a Meter is found upon testing to be inaccurate by an amount exceeding any applicable tolerances, the Parties shall adjust all measurements made by the inaccurate or defective Meter during the affected period in order to account for such inaccuracy. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the applicable Meter was in service since last tested, but not exceeding 3 months, in the amount the applicable Meter shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the records associated with a Meter shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and Buyer arising out of such inaccuracy of applicable Metering Facilities.

### **4.3 Records and Audits**

(a) Records. Seller shall keep complete and accurate records necessary for the purposes of proper administration of this Agreement, including all records necessary for billing and payments, records of the Metered Output and Committed Energy, and such other records as may be required by applicable Governmental Authorities or Prudent Electrical Practice. Seller shall retain all such records throughout the Term and for a period of not less than 2 years following the termination of this Agreement. Seller shall upon request provide Buyer with copies of such records and with such other information as Buyer may require in connection with the performance of its obligations under this Agreement, the Transmission Provider Tariff, the ERCOT Protocols or other Applicable Laws.

(b) Audit Rights. Buyer has the right, at any time during the Term and for a period of 2 years thereafter, to audit and to examine Seller's records and data kept by Seller relating to the performance of its obligations under, and the administration of, this Agreement during normal business hours and upon reasonable prior notice. Each Party is responsible for its own costs and expenses associated with any audit or examination.

### **4.4 Metering and Facility Status Telemetry**

(a) ERCOT WAN. Seller shall comply will all telemetry requirements of ERCOT pursuant to the then applicable Protocols as they may be amended from time to time.

(b) SCADA Signals to Buyer. Seller's SCADA system shall provide to Buyer, real-time telemetry of the operation of the Facility including, but not limited to: KV, Megawatt, Mega Var, total Facility output (MW), Buyer's capacity output (MW), solar irradiance, inverter status, breaker status, and any other parameters reasonably requested by Buyer consistent with the information required by LSEs and QSEs (the "Buyer's SCADA Requirements").

(c) To accommodate Buyer's SCADA Requirements, Buyer requires a minimum of two (2) independent communication paths with one of the two communications being a dedicated circuit only one of which can be a VPN circuit. Within 30 days of the Effective Date, Buyer will provide Seller with all parameters, prerequisites and requirements Buyer's SCADA Requirements and the Parties will each cooperate in a Commercially Reasonable manner and use Prudent Electrical Practices to implement Buyer's SCADA Requirements as of COD, including all necessary operational testing and performance. The costs and expenses for all equipment, materials and support services related to or required for the implementation and continued operation of the Buyer's SCADA Requirements throughout the Delivery Term shall be the responsibility of the Party incurring any such costs and expenses.

## **ARTICLE 5 BILLING AND PAYMENT**

### **5.1 Billing**

(a) Except as otherwise specified in this Agreement, the calendar month is the standard period for all payments under this Agreement. On or before the 10th day following the end of each calendar month included in the Delivery Term, Seller shall provide to Buyer, or its designee, an invoice (substantially in the form attached hereto as Exhibit F) specifying (a) the amount due to Seller pursuant to Section 3.1 for the ended calendar month, and (b) any other amounts due between the Parties with respect to such ended calendar month.

(b) Each such invoice provided by Seller will be issued in duplicate and must be accompanied by supporting documentation sufficient to enable Buyer to verify the accuracy of the amounts specified in the invoice, and if applicable, a statement of all transfers of RECs or other Environmental Attributes made during the ended calendar month. Seller must deliver each invoice in accordance with the notice requirements of Section 11.1.

(c) All invoices will include a unique invoice number, the purchase order or delivery order number, if applicable, and the master agreement number if applicable, the name of the Seller's department responsible for this Agreement, and the name of the point of contact for such department. Invoices shall be itemized and transportation charges, if any, shall be listed separately. Seller's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in Seller's registration with Buyer as a vendor to Buyer. Unless otherwise instructed in writing, Buyer may rely on the remittance address specified on the Seller's invoice.

(d) Federal excise Taxes, State Taxes, or City sales Taxes will not be included in the amount invoiced to Buyer.

## 5.2 **Payments**

(a) **Generally.** Subject to Section 5.2(c), Buyer shall remit payment on any invoice under this Agreement on or before the 30th day after receipt of such invoice or, if such day is not a Business Day, then on the next following day that is a Business Day. Subject to Section 5.2(c), Seller shall pay all amounts due to Buyer under this Agreement, including any Delay Liquidated Damages, GEP Damages, or otherwise in respect of any obligation of Seller to indemnify or reimburse Buyer, within 45 days following the end of the calendar month in which such amounts have become due. All payments under this Agreement will be made by the applicable Party by wire transfer of immediately available funds to the account designated in writing by the payee for receipt of such payments.

(b) **Late Payments and Interest Rate.** Any undisputed amounts not paid when due will accrue interest on a daily basis at the Interest Rate from and including the date due through but excluding the date paid. All calculations of interest will be computed on the basis of a 365-day year.

(c) **Corrections to Invoices; Payment Disputes.** Each Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice under this Agreement within 12 months following the date such invoice, or adjustment to an invoice, was rendered. Any dispute with respect to an invoice must be made in writing and include a reasonably detailed description of the basis for such dispute. If a Party provides written notice of a dispute with respect to an invoice prior to the applicable due date for such invoice, such Party shall pay the undisputed amount of such invoice when due. If in connection with the resolution of the dispute it is determined that (i) an additional payment is due by a Party, such Party shall make the required payment to the other Party within 10 Business Days following such resolution, together with interest accrued at the Interest Rate from and including the due date to but excluding the date paid or (ii) a Party is entitled to a refund of any amount previously paid, the other Party shall, at the entitled Party's election, either return the amount overpaid within 10 Business Days following such resolution or provide the entitled Party with a credit on the next invoice delivered following resolution of the dispute equal to the amount overpaid, in each case together with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid by the other Party or reflected as a credit in an invoice delivered by the other Party, as applicable. If the resolution of any disputed amount results in a payment due from a Party, such Party's payment obligations under this Agreement will not be deemed to have been satisfied until such dispute is resolved and the amount, if any, payable by such Party upon such resolution has been paid.

## 5.3 **Netting of Payments**

All undisputed mutual debts and payment obligations due and owing between the Parties on the same day pursuant to this Agreement, including any damages, interest, and payments or credits, will be automatically satisfied and discharged through netting, and if the aggregate amount payable by one Party exceeds the aggregate amount that otherwise would have been payable by the other Party, replaced by an obligation of the Party by which the larger aggregate amount would have been payable to pay to the other Party the excess of the larger aggregate amount over the smaller aggregate amount.

## 5.4 **Governmental Charges**

(a) Seller shall pay or cause to be paid all Taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Facility or the Products arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product at

and from the Delivery Point (other than ad valorem, franchise or income taxes related to the sale of the Product by Seller and are, therefore, the responsibility of Seller). In the event one Party remits or pays any Governmental Charges that are the other Party's responsibility hereunder, the amount of such payment shall be included in the calculation of the next monthly net payment amount calculated by Seller pursuant to this Article 5. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. Buyer shall furnish a Tax exemption certificate upon request by Seller.

(b) The Parties shall reasonably cooperate to minimize each Party's Taxes; *provided, however*, that neither Party is obligated to incur any financial burden to reduce Taxes for which the other Party is responsible hereunder. All Product delivered by Seller to Buyer hereunder are sales for resale.

## **ARTICLE 6 CREDIT REQUIREMENTS**

### **6.1 Seller Credit Support**

(a) Seller Pre-COD Credit Support. Within 10 Business Days following the Effective Date, Seller shall transfer Credit Support to Buyer having an aggregate value equal to [REDACTED] *multiplied by* (ii) the Committed Capacity, but in no event greater in amount than the amount of the Maximum Pre-COD Damages Cap (the "Seller Pre-COD Credit Support"). Seller shall maintain such Credit Support for the benefit of Buyer until the Commencement Date. Buyer shall be entitled to claim on the Credit Support in accordance with Section 6.3. Seller shall have no obligation to replace any Credit Support if, at any time prior to the Commencement Date, any portion of the Credit Support provided by Seller is applied by Buyer to satisfy any outstanding obligations of Seller under this Agreement.

(b) Seller Post-COD Credit Support. Within no more than 10 Business Days following the Commencement Date, Seller shall transfer Credit Support to Buyer having an aggregate value equal to [REDACTED] *multiplied by* (ii) the Committed Capacity (the "Seller Operating Period Credit Support"). Seller may apply outstanding Credit Support provided to Buyer in respect of the Seller Pre-COD Credit Support toward the satisfaction of its obligation to transfer to Buyer the Seller Operating Period Credit Support. Seller shall maintain Credit Support for the benefit of Buyer having an aggregate value at least equal to the Seller Operating Period Credit Support then applicable to Seller until the later of (x) the end of the Delivery Term and (y) the date on which all of Seller's payment obligations under this Agreement have been satisfied in full (other than contingent obligations with respect to which Buyer has not made a claim). Buyer shall be entitled to claim on the Credit Support in accordance with Section 6.3. In the event any portion of the Credit Support provided by Seller following the Commencement Date is applied by Buyer to satisfy any outstanding obligations of Seller under this Agreement, Seller shall within 10 Business Days following Buyer's written demand, replace such Credit Support so that the amount of Credit Support outstanding in favor of Buyer is not less than the full value of the Seller Operating Period Credit Support.

### **6.2 Buyer Credit Support**

As of the Effective Date, unless Buyer has a Credit Rating above an Investment Grade Credit Rating by both S&P and Fitch (in which case the provisions of Section 6.2(c) shall apply), the following provisions of Sections 6.2(a) and (b) shall apply to Buyer:

(a) Buyer Pre-COD Credit Support. Within 10 Business Days following the Effective Date, Buyer shall transfer Credit Support to Seller having an aggregate value equal to [REDACTED] *multiplied*

by (ii) the Committed Capacity (the “Buyer Pre-COD Credit Support”). Buyer shall maintain such Credit Support for the benefit of Seller until the Commencement Date. Seller shall be entitled to claim on the Credit Support in accordance with Section 6.3. Buyer shall have no obligation to replace any Credit Support if, at any time prior to the Commencement Date, any portion of the Credit Support provided by Buyer is applied by Seller to satisfy any outstanding obligations of Buyer under this Agreement.

(b) Buyer Post-COD Credit Support. Within no more than 10 Business Days following the Commencement Date, Buyer shall transfer Credit Support to Seller having an aggregate value equal to ( [REDACTED] multiplied by (ii) the Committed Capacity (the “Buyer Operating Period Credit Support”). Buyer may apply outstanding Credit Support provided to Buyer in respect of the Buyer Pre-COD Credit Support toward the satisfaction of its obligation to transfer to Seller the Buyer Operating Period Credit Support. Buyer shall maintain Credit Support for the benefit of Seller having an aggregate value at least equal to the Buyer Operating Period Credit Support then applicable to Buyer until the later of (x) the end of the Delivery Term and (y) the date on which all of Buyer’s payment obligations under this Agreement have been satisfied in full (other than contingent obligations with respect to which Seller has not made a claim). Seller shall be entitled to claim on the Credit Support in accordance with Section 6.3. In the event any portion of the Credit Support provided by Buyer following the Commencement Date is applied by Seller to satisfy any outstanding obligations of Buyer under this Agreement, Buyer shall within 10 Business Days following Seller’s written demand replace such Credit Support so that the amount of Credit Support outstanding in favor of Seller is not less than the full value of the Buyer Operating Period Credit Support.

(c) If, at any time after the Effective Date, Buyer has a Credit Rating below the Investment Grade Credit Rating by either S&P or Fitch, then Buyer shall transfer Credit Support to Seller having an aggregate value equal the Buyer Credit Support Amount. Buyer shall maintain such Credit Support for the benefit of Seller until the date on which all of Buyer’s payment obligations under this Agreement have been satisfied in full (other than contingent obligations with respect to which Seller has not made a claim). Seller shall be entitled to claim on the Credit Support in accordance with Section 6.3. In the event any portion of the Credit Support provided by Buyer following the Commencement Date is applied by Seller to satisfy any outstanding obligations of Buyer under this Agreement, Buyer shall within 3 Business Days following Seller’s written demand replace such Credit Support so that the amount of Credit Support outstanding in favor of Seller is not less than the full amount of the Buyer Credit Support Amount. In the event Buyer’s Credit Rating elevates to Investment Grade Credit Rating by both S&P and Fitch, the Buyer Credit Support will no longer be required, and Seller shall return to Buyer any Buyer Credit Support provided pursuant to this Section 6.2(c) within 10 Business Days of Buyer providing written notice of such change in Buyer’s Credit Rating to Seller.

### 6.3 General Provisions Applicable to Credit Support

(a) Credit Support in the form of Cash.

- (i) The Pledgor pledges to the Secured Party, as security for its obligations under this Agreement, and grants to the Secured Party a first priority continuing security interest in, lien on and right of set-off against all Credit Support in the form of Cash transferred to or received by the Secured Party under this Agreement. Upon the transfer by the Secured Party to the Pledgor of Cash held by the Secured Party as Credit Support, the security interest and lien granted hereunder on that Cash will be released immediately, and to the extent possible, without any further action by either Party.

- (ii) Buyer, as the Secured Party, shall maintain all Credit Support in the form of Cash transferred to or received by Buyer in a segregated deposit account maintained by Buyer with a Qualified Issuer for the purpose of holding credit support provided to Buyer by its trading counterparties, which account must include a designation clarifying that amounts on deposit in such account are held by Buyer as credit support to secure the obligations of its trading counterparties.
  - (iii) Seller, as the Secured Party, shall maintain all Credit Support in the form of Cash transferred to or received by Seller in a segregated deposit account maintained by Seller with a Qualified Issuer for the purpose of holding such Credit Support and that bears a designation clarifying that amounts on deposit in such account are held by Seller as credit support to secure the obligations of Buyer under this Agreement.
  - (iv) In lieu of any interest paid or deemed to have been paid with respect to Credit Support in the form of Cash (all of which may be retained by the Secured Party), Credit Support in the form of Cash will accrue interest on a daily basis at the Fed Funds Rate for the actual number of days elapsed based on a year of 365 days. Seller shall include the amount of the accrued interest, if any, payable by the Secured Party with respect to a month in the invoice provided with respect to such month pursuant to Section 5.1. Any accrued interest will constitute Credit Support in the form of Cash and will be subject to the security interest granted under Section 6.3(a)(i).
  - (v) For purposes of this Agreement, the value of Credit Support in the form of Cash is equal to the amount of such Cash.
- (b) Credit Support in the form of a Letter of Credit.
- (i) Each Letter of Credit must provide that the Secured Party may, and the Secured Party has the right to, in the following situations and upon presentation to the issuer of such Letter of Credit of the certificates or other documentation required by the terms of the Letter of Credit, draw upon the Letter of Credit in an amount up to the amount due and unpaid by the Pledgor (including any amounts due in connection with the termination of this Agreement) in the case of clause (A), or up to the entire amount available to be drawn thereunder in the case of clause (B):
    - (A) either (x) an Event of Default has occurred and is continuing with respect to the Pledgor or (y) this Agreement has terminated or an early termination date in respect of this Agreement has been designated in connection with the occurrence of an Event of Default with respect to the Pledgor; or
    - (B) a Letter of Credit Default has occurred with respect to the Letter of Credit or 30 or fewer days remain until the expiration date of the Letter of Credit and the Pledgor has failed to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), establish one or more additional Letters of Credit, or otherwise transfer sufficient Credit Support (in any other acceptable form) to the Secured Party as required by this Agreement.

- (ii) With respect to each outstanding Letter of Credit, the Pledgor shall either cause the Letter of Credit to be renewed or provide substitute Credit Support, in each case at least 30 days prior to the expiration date of the Letter of Credit. If a Letter of Credit Default occurs with respect to an outstanding Letter of Credit, the Pledgor shall within 10 Business Days following the Secured Party's notice of the Letter of Credit Default transfer to the Secured Party substitute Credit Support. For purposes of this clause (ii), the aggregate value of substitute Credit Support that the Pledgor is required to transfer to the Secured Party must be at least equal to the amount required to cause the total value of all outstanding Credit Support, calculated following the lapse of the 30th day prior to the expiration date of the Letter of Credit or the occurrence of the Letter of Credit Default, to be at least equal to the Credit Support Amount then applicable to the Pledgor.
- (iii) Upon the occurrence of a Letter of Credit Default of the type described in clause (b) of the definition thereof, the issuer of the affected Letter of Credit will no longer be a Qualified Issuer for purposes of the definition of the term "Letter of Credit" unless otherwise agreed by the Secured Party.
- (iv) Proceeds received by the Secured Party from any draw on a Letter of Credit will, to the extent not applied to the outstanding obligations of the Pledgor under this Agreement, constitute Credit Support in the form of Cash.
- (v) For purposes of this Agreement, the value of Credit Support in the form of Letter of Credit is equal to the amount available to be drawn by the Secured Party under such Letter of Credit unless (x) a Letter of Credit Default has occurred with respect to such Letter of Credit or (y) 30 or fewer days remain until the expiration date of such Letter of Credit, in either of which case, the value of such Letter of Credit is equal to \$0.
- (vi) All costs and expenses associated with establishing, maintaining, renewing, substituting, cancelling, increasing, or reducing the amount of (as the case may be) one or more Letters of Credit are the responsibility of the Pledgor.

(c) Credit Support in the Form of a Guaranty. For purposes of this Agreement, the value of Credit Support in the form of a Guaranty is equal to the undrawn portion of the maximum guaranteed amount specified in such Guaranty, if any, unless a Guaranty Default has occurred with respect to such Guaranty, in which case the value of such Guaranty is equal to \$0. If a Guaranty Default occurs with respect to an outstanding Guaranty, the Pledgor shall within 10 Business Days following the Secured Party's notice of the occurrence of the Guaranty Default transfer to the Secured Party substitute Credit Support. For purposes of this Section 6.3(c), the aggregate value of substitute Credit Support that the Pledgor is required to transfer to the Secured Party must be at least equal to the amount required to cause the total value of all outstanding Credit Support, calculated following the occurrence of the Guaranty Default, to be at least equal to the Credit Support Amount then applicable to the Pledgor.

(d) Substitution and Return.

- (i) Upon notice to the Secured Party specifying the items of Credit Support to be exchanged, the Pledgor may on any Business Day transfer to the Secured Party

substitute Credit Support, and so long as no Event of Default with respect to the Pledgor has occurred and is continuing, the Secured Party shall return to the Pledgor the items of Credit Support identified by the Pledgor in its notice by not later than the third Business Day following the date on which the Secured Party receives the substitute Credit Support, except that the Secured Party will only be required to return Credit Support with a value as the date of transfer equal to the value of the substitute Credit Support as of the same date.

- (ii) Upon (A) the reduction of the Credit Support Amount applicable to the Pledgor and (B) the later to occur of (x) the end of the Delivery Term and (y) the satisfaction in full of all of the Pledgor's obligations under this Agreement (other than contingent obligations with respect to which the Secured Party has not made a claim), the Secured Party shall, within 10 Business Days following receipt of the Pledgor's demand, return to the Pledgor, in the case of clause (A), the applicable portion of the Credit Support of the Pledgor then outstanding in favor of the Secured Party, and, in the case of clause (B), all Credit Support of the Pledgor then outstanding in favor of the Secured Party. In connection with any such return, the Secured Party shall at the Pledgor's expense take such actions as may be reasonably requested by the Pledgor to evidence the release and termination of the applicable Credit Support.

(e) Secured Party's Rights and Remedies. If at any time a default or Event of Default with respect to the Pledgor has occurred or if an early termination date in respect of this Agreement has occurred or been designated as a result of an Event of Default with respect to the Pledgor, then, and in addition to the other rights and remedies set forth in the Agreement, the Secured Party may exercise one or more of the following rights and remedies: (i) all rights and remedies available to a secured party under Applicable Law with respect to Credit Support in the form of Cash held by the Secured Party; (ii) all rights and remedies available to the Secured Party under the terms of any Letter of Credit or Guaranty provided for its benefit, if any; and (iii) the right to setoff any present or future amounts payable by the Pledgor under this Agreement against any Credit Support held by the Secured Party (or any obligation of the Secured Party to transfer that Credit Support to the Pledgor).

#### 6.4 Security is Not a Limit on Post-COD Liabilities

The Credit Support being provided under Section 6.1 or Section 6.2 by either one or both of the Parties (a) constitutes security for, but is not a limitation of, such Party's obligations under this Agreement from and after the Commencement Date and (b) shall not be a Party's exclusive remedy for the other Party's failure to perform in accordance with this Agreement from and after the Commencement Date.

#### 6.5 UCC Waiver

This Article 6 sets forth the entirety of the agreement of the Parties regarding credit, collateral, and adequate assurances. Except as expressly set forth in this Article 6, neither Party has, or will have, any obligation to post margin, pay deposits, make prepayments or otherwise provide any other financial or performance assurances, in any form whatsoever, on the basis of reasonable grounds for insecurity with respect to the creditworthiness of a Party. Each Party waives all other express or implied rights relating to financial assurances, whether arising from Section 2.609 of the Texas Business and Commerce Code or similar common law doctrines.



## ARTICLE 7 ADDITIONAL OBLIGATIONS

### 7.1 Construction, Operation and Maintenance of the Facility

(a) Generally. Seller shall design, develop, finance, construct, own, operate, and maintain the Facility in accordance with this Agreement, the Interconnection Agreement, all Applicable Laws, all Permits, and Prudent Electrical Practice.

(b) Design and Location. Exhibit A includes (i) a detailed preliminary description of the Facility as of the date hereof, including the anticipated number, manufacturer, and power rating of the Solar Panels, and (ii) a scaled map of the Site and surrounding area that depicts the location of the Facility and important ancillary facilities, including the Delivery Point. Seller may from time to time modify the design of the Facility as set forth in Exhibit A on the condition that such modifications could not reasonably be expected to have a material and adverse impact on Seller's ability to perform its obligations under this Agreement, including by causing the Facility to not qualify as an Eligible Renewable Resource.

(c) Compliance. Seller shall, in its own name and at its own expense, seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits and other authorizations that are required by any Applicable Law or Governmental Authority in order to enable Seller to perform its obligations under this Agreement.

(d) Disclosure. Seller shall provide to Buyer such information regarding the permitting, engineering, construction, maintenance, and operations of the Facility as Buyer may from time to time reasonably request, subject to licensing or other restrictions applicable to Seller with respect to confidentiality, disclosure, or use that would prevent Seller from providing such information to Buyer.

(e) Insurance. Seller shall at all times during the Term maintain at its sole expense, policies of insurance in amounts and with coverage as set forth in Exhibit C.

### 7.2 Construction

(a) Generally. Seller shall use Commercially Reasonable Efforts to cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date.

(b) Quarterly Reports. Until the Commercial Operation Date is achieved, Seller shall deliver to Buyer a quarterly progress report by no later than the 10th Business Day after the end of each calendar quarter. Such reports shall address, in reasonable detail:

- (i) progress toward the achievement of the Commercial Operation Date,
- (ii) status of permitting and other required approvals,
- (iii) financing for construction and operation of the Facility,
- (iv) interconnection matters,
- (v) labor and contracting matters, and

(vi) environment, health, and safety matters.

(c) Commercial Operation Date Extensions. In the event that Seller's achievement of the Commercial Operation Date by the Anticipated COD is prevented due to (i) the occurrence of a Force Majeure Event, (ii) Buyer's breach of its obligations under this Agreement, (iii) the Transmission Provider's delay in completing construction, testing, or commissioning of its interconnection facilities related to the Facility, (iv) issuance to and receipt by Seller or Seller's QSE of a System Curtailment Order, (v) delays related to the commissioning and testing of the Facility required to achieve the Commercial Operation Date, but only to the extent such commissioning or testing delay is not caused by or attributable to Seller's breach of the Interconnection Agreement, transmission interconnection equipment delivery or transmission interconnection labor shortages (which are not otherwise a Force Majeure Event) or its obligations under the ERCOT Protocols or (vi) Emergencies not otherwise the subject of any System Curtailment Order (each, a "Delay Condition"), each of the Anticipated COD and Guaranteed Commercial Operation Date will be extended on a day-for-day basis by the number of days by which the occurrence or continuance of the Delay Condition prevented Seller from achieving the Commercial Operation Date. The Outside Commercial Operation Date shall also be extended due to a Delay Condition for the same period as each of the Anticipated COD and the Guaranteed Commercial Operation Date are extended. Other than with respect to a Delay Condition described in clause (ii) of this Section 7.2(c), in no event, except subject to the agreement of the Parties, will the Anticipated COD, and concurrently, each of the Guaranteed Commercial Operation Date and the Outside Commercial Operation Date, each be extended, in the aggregate, by [REDACTED] pursuant to this Section 7.2(c).

(d) Buyer's Access and Inspection Rights. Buyer has the right, upon reasonable prior written notice to Seller, and subject to any restrictions contained in the Interconnection Agreement or the BOP/EPC Contract, to have its Representatives present at the Facility in order to monitor the construction, commissioning, and testing of the Facility and its systems. The presence of Buyer and/or its Representatives at the Facility shall be at the sole cost and expense of Buyer and Seller shall not be required to incur any costs and expenses to accommodate any such presence by Buyer and/or its Representatives at the Facility. Seller shall, however, cooperate in such physical inspections of the Facility as may be reasonably requested by Buyer, either or both during and after completion of construction. Buyer shall ensure that all persons visiting the Facility on behalf of Buyer comply with all of the applicable safety and health rules and requirements of Seller, its Affiliates or the BOP/EPC Contractor, that are provided to such Persons and that all such Persons do not disrupt or otherwise impede (i) the progress of work being performed by the BOP/EPC Contractor (or any of its contractors or subcontractors) if any such access is granted during construction of the Facility, or (ii) operations of the Facility if any such access is granted following the Commencement Date.

### 7.3 Delay Damages

(a) Commercial Operation Date Notices. If Seller determines that it is unlikely to achieve the Commercial Operation Date by the Anticipated COD, or if it becomes aware of any Delay Condition that could reasonably be expected result in the extension of the Anticipated COD and, concurrently, the Guaranteed Commercial Operation Date and Outside Commercial Operation Date as described in Section 7.2(c), then Seller shall (A) promptly provide written notice thereof to Buyer, which notice must be accompanied by a reasonably detailed explanation of the basis for such determination or the Delay Condition, as applicable, and the actions Seller is taking and will take in order to address any resulting delay in the achievement of the Commercial Operation Date and (B) thereafter upon request of Buyer provide updates to such notice.

(b) Failure to Timely Achieve Commercial Operation. If Seller fails to cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date (as extended under Section 7.2(c)), Seller shall pay to Buyer as liquidated damages an amount (expressed in \$'s) equal to the Delay Liquidated Damages calculated for each day from and after the Guaranteed Commercial Operation Date through the earlier to occur of (x) the Commercial Operation Date and (y) [REDACTED] day after the Guaranteed Commercial Operation Date. All Delay Liquidated Damages will be paid to Buyer in accordance with the provisions of Article 5. For the avoidance of doubt, the payment of any Delay Liquidated Damages by Seller to Buyer hereunder shall not reduce the value of the Seller Operating Period Credit Support.

(c) Exclusive Remedy.

- (i) Receipt of Delay Liquidated Damages is Buyer's sole and exclusive remedy for Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date.
- (ii) If Seller fails to achieve the Commercial Operation Date on or before the Outside Commercial Operation Date (as extended in accordance with Section 7.2(c)), then either Party will thereafter have the right to terminate this Agreement by providing written notice of termination to the other Party (the "Early Termination Right"); provided that (A) Buyer's exercise of the Early Termination Right shall begin on the Day following the Outside Commercial Operation Date and expire, if not previously exercised, upon the occurrence of the Commercial Operation Date, and (B) Seller's exercise of the Early Termination Right shall begin on the Day [REDACTED] after the Outside Commercial Operation Date and expire, if not previously exercised, upon the occurrence of the Commercial Operation Date. If this Agreement is terminated by either Party in accordance with the foregoing, Seller shall be obligated to pay all Delay Liquidated Damages then due and owing to Buyer within no less than ten (10) Business Days of the date of any such termination, failing Seller's payment of which, Buyer may draw on and retain all remaining Credit Support provided by Seller, up to the amount of such Delay Liquidated Damages, in satisfaction of such Delay Liquidated Damages. Payment of such Delay Liquidated Damages is Seller's sole and exclusive liability, and Buyer's sole and exclusive remedy, in connection with the termination of this Agreement by either Party due to Seller's failure to achieve the Commercial Operation Date by the Outside Commercial Operation Date. To the extent Buyer receives any Delay Liquidated Damages from Seller, Buyer agrees to Seller amending Seller's Credit Support (if a Letter of Credit) to reduce such Credit Support by an equivalent amount.

7.4 Commercial Operation Procedure

(a) Agreement with Transmission Provider. Seller shall, at its own cost and expense, negotiate, enter into, and perform its obligations under, an Interconnection Agreement and such other agreements, including system upgrade agreements, with the Transmission Provider as may be needed to enable Seller to transmit Energy to the Delivery Point.

(b) Anticipated Nameplate Capacity. Seller shall use Commercially Reasonable Efforts to cause the Installed Capacity to be equal to the Anticipated Nameplate Capacity on the Commercial Operation Date.

(c) Commercial Operation Conditions. Commercial Operation will be deemed to have occurred on the date on which Seller has provided written notice to Buyer that all of the following conditions (the “Commercial Operation Conditions”) have been satisfied:

- (i) Seller is qualified and registered as a “Resource Entity” in accordance with the ERCOT Protocols, and Seller has provided written notification to Buyer that ERCOT has approved Seller’s request to commence commercial operation in accordance with Part 3 of ERCOT’s New Generator Commissioning Checklist.
- (ii) The Facility has been registered with ERCOT and the PUCT to receive RECs and Compliance Premiums for the Energy it produces.
- (iii) An officer of Seller or of an Affiliate of Seller, as applicable, that is familiar with the Facility has certified in writing to Buyer that (A) Exhibit A, as updated pursuant to Section 7.1(b), accurately describes the equipment and characteristics of the Facility, (B) Seller is not in breach of its obligations under the Interconnection Agreement, (C) Seller has obtained all Permits required to be obtained by Seller to construct and operate the Facility in compliance with applicable requirements of Applicable Law, this Agreement, and Prudent Electrical Practice, and all such Permits are in full force and effect, and (D) Seller is in compliance with the terms and conditions of this Agreement in all material respects.
- (iv) The interconnection of the Facility to the Transmission System has been completed and commissioned in accordance with the Interconnection Agreement.
- (v) Seller has provided to Buyer certificates of insurance evidencing the coverages required by Section 7.1(e).
- (vi) Seller has transferred Credit Support to Buyer having an aggregate value then outstanding equal to the Seller Operating Period Credit Support.

(d) Reports. Commencing on the Commercial Operation Date, within 30 days after the end of each calendar month during the Delivery Term (each, a “Reporting Month”), Seller shall provide to Buyer a report in electronic format, which report shall include (i) summaries of the actual solar insolation for the Facility and the predicted electrical output based on such data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility’s computer monitoring system, (ii) the Metered Output for such Reporting Month, (iii) summaries of any other significant events related to the operation of the Facility for the Reporting Month, and (iv) any supporting information that Buyer may from time to time reasonably request (including historical solar insolation data for the Facility).

## 7.5 **Performance Guaranties**

(a) **IE Report.** Seller shall deliver the IE Report pursuant to which will be established the Benchmark Quantity for all Contract Years of the Delivery Term, including the methodology and all calculations used to determine such Benchmark Quantity. The Benchmark Quantity will be reflected for each Contract Year in Exhibit E.

(b) The quantity of Delivered Energy that Seller expects to be able to deliver to Buyer each Contract Year shall be the Benchmark Quantity (in MWh) reduced by [REDACTED] for each Contract Year subsequent the first (1st) Contract Year and (ii) any quantity of Energy (in MWh) not generated at the Facility or, if capable of being generated, was not capable of being delivered to the Delivery Point, due to an applicable Excused Condition (the "Contract Quantity"). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) for each Contract Year during the Delivery Term ("Performance Measurement Period"), commencing at the end of the first (1st) Contract Year, subject, in all cases, to reduction due to any one or more applicable Excuse Conditions. "Guaranteed Energy Production" or "GEP" means an amount of Energy, as measured in MWh for each Performance Measurement Period, as described by the following formula:

Guaranteed Energy Production [REDACTED]

(c) If Seller has a GEP Failure, then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Seller shall promptly notify Buyer of such failure.

(d) Seller shall pay to Buyer, as Buyer's sole and exclusive remedy in connection with a GEP Failure, GEP Damages calculated pursuant to Exhibit G, subject in all cases to the Maximum GEP Damages Cap.

(e) The Parties agree that the damages sustained by Buyer associated with Seller's failure to achieve the Guaranteed Energy Production requirement may be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Seller shall pay the GEP Damages to Buyer as liquidated damages or, in the alternative, Seller shall provide compensation in a manner as agreed to by both Buyer and Seller. In no event shall Buyer be obligated to pay GEP Damages.

(f) Within no less than sixty (60) days after the end of the applicable Performance Measurement Period, Buyer shall provide notice to Seller in writing of the amount of the GEP Damages, if any, which Seller shall pay within sixty (60) days of receipt of the notice. Disputes with respect to the existence of a GEP Failure or the calculation of GEP Damages shall be resolved in accordance with Article 11.

## 7.6 **Obligation to Schedule and Deliver**

(a) **Sharing of Operating Data and Generation Forecasts.** During the Delivery Term, Seller shall share with Buyer real-time operating data from the Facility. If Seller delivers forecasts of generation to any entity (e.g., the Transmission Provider), then Seller shall also deliver such forecasts to Buyer.

(b) **Operating Procedures.** The Parties shall use Commercially Reasonable Efforts to agree to scheduling and operating procedures for the Facility encompassing the general operating parameters of the

Facility, applicable requirements of the ERCOT Protocols and processes and procedures for the scheduling and delivery of the Products (the “Operating Procedures”) no later than sixty (60) days prior to the Anticipated COD, which Operating Procedures will apply during entirety of the Delivery Term, subject to any subsequent mutual modification by the Parties. For the avoidance of doubt, the failure of the Parties to agree to and implement such Operating Procedures with the foregoing sixty (60) day-period shall not be or give rise to an Event of Default by either Party.

(c) Planned Outages. Within a Commercially Reasonable time prior to the Commercial Operation Date, Seller shall provide Buyer with a schedule of all Planned Outages at the Facility for the period running from the Commercial Operation Date through and including the first Contract Year. Thereafter, a schedule of all Planned Outages for each subsequent Contract Year will be provided by Seller to Buyer within a Commercially Reasonable time prior to the beginning of each such subsequent Contract Year. Seller shall not schedule any Planned Outages unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties, (iii) such outage is required in accordance with Prudent Electrical Practices, or (iv) the Parties agree otherwise in writing. Seller shall use Commercially Reasonable Efforts to schedule Planned Outages to maximize the productive output of the Facility and no Planned Outages will be permitted between May 15<sup>th</sup> and September 31<sup>st</sup> of each Contract Year, subject only to the provisos (i) and (iv) above. Seller shall give Buyer immediate notice (within one hour or as soon as otherwise reasonably practicable) of any Forced Outage or any other applicable Excused Condition at the Facility if such events will curtail or adversely affect scheduled Energy deliveries to Buyer or any Energy forecasts previously provided to Buyer. Such notice must include a reasonable description of the Forced Outage or other applicable Excused Condition and an estimate of the duration of the outage due to such Forced Outage or other applicable Excused Condition. Seller shall provide Buyer updates regarding any material changes that impact the status of any Planned Outage set forth in the initial notice. Seller shall use Commercially Reasonable Efforts to avoid or mitigate outages due to any Excused Condition that may be within its control during the Delivery Term.

(d) Curtailment.

- (i) Subject to clause (iv) below, neither Party shall be liable to the other Party for any losses or damages due to the issuance of a System Curtailment Order. In such case, the System Curtailment will be treated by the Parties as a Force Majeure Event.
- (ii) Except as set forth in this Section 7.6(d), Seller shall not curtail or interrupt deliveries of Energy from the Facility as required by this Agreement for economic reasons of any type whatsoever; provided Seller’s obligation to generate, deliver and sell to Buyer the Energy from the Committed Capacity shall be excused during the hours of any Excused Condition. Buyer shall have no obligation to purchase the Energy from the Facility during any applicable Excused Condition.
- (iii) Subject to the provisions of clause (v) below, Seller shall reduce generation from the Facility as required pursuant to a Buyer Curtailment Order, provided that Buyer shall pay Seller the Contract Price for Deemed Delivered Energy associated with a Buyer Curtailment Period. Buyer shall notify Seller, by telephonic communication or other method as may be set forth in the Operating Procedures, of a Buyer Curtailment Order, but in no event later than thirty (30) minutes prior to the effectiveness of such Buyer Curtailment Order. In all cases involving a Buyer Curtailment, Seller shall reduce the Energy delivered by Seller to Buyer at the Delivery Point to the level

stated by Buyer in such Buyer Curtailment Order. During any such period Buyer Curtailment Periods, Seller shall have the right (but shall have no obligation) to make available, for sale, for resale or any other purpose, any rights and commercial benefits associated with Products, including Environmental Attributes, Capacity Attributes, and Ancillary Services, to the extent permitted under Applicable Law or ERCOT Protocols.

- (iv) Seller shall at all times during the Term comply with the directives of the Transmission Provider and the Reliability Entities given pursuant to the Interconnection Agreement. Seller will notify Buyer, as soon as reasonably practicable, but in no event later than thirty (30) minutes, by telephonic communication or other method as may be set forth in the Operating Procedures, of a System Curtailment Order, upon receipt of such direction by Seller (or Seller's QSE) as the market participant registered by Transmission Provider for the Facility. In all cases involving a System Curtailment, Seller shall reduce the Energy output delivered by Seller to Buyer and any co-offtaker at the Delivery Point(s) on a non-discriminatory, pro-rata basis to the level stated in the System Curtailment Order. The Buyer shall have no obligation to purchase the Energy from the Facility during a System Curtailment event save and except to the extent that the foregoing pro-rata basis reduction in the output of the Facility results in Seller's ability to generate and deliver to the Delivery Point any quantity of Energy, in which event Buyer will be obligated to purchase that portion of the Energy so generated and delivered.
- (v) In its compliance with Applicable Law or ERCOT Protocols, Seller shall have the right to disregard a Buyer Curtailment Order if, in the Commercially Reasonable opinion of Seller, Seller's compliance with any such Buyer Curtailment Order would subject Seller to being liable for any penalties or fines imposed on Seller by any Governmental Authority and or the potential for any actual direct damages to be suffered by Seller as a result of complying with a Buyer Curtailment Order. Seller's failure to comply with a Buyer Curtailment Order in accordance with the provisions of this clause (v) shall not result in an Event of Default hereunder by Seller.
- (vi) If Seller fails to comply with the curtailment directives and instructions of a System Curtailment Order, the result of which is the imposition on Buyer of any penalties or fines by any Governmental Authority or Buyer suffering any actual direct damages, Seller shall be liable to Buyer for the reimbursement of any and all of the foregoing. Seller's failure to comply with a System Curtailment Order shall not be an Event of Default by Seller; provided, Seller's failure to reimburse Buyer for any such actual direct damages, including any fines or penalties incurred by Buyer as a result of Seller's failure to comply shall be considered a default by Seller under this Agreement in accordance with Section 9.1(a).

(e) Operation of the Facility. Seller shall operate and maintain the Facility in accordance with Prudent Electrical Practice and Applicable Laws.

## 7.7 **Publicity**

The Parties shall not, and shall cause its respective Affiliates to not, issue or make any public announcement, press release, or statement regarding this Agreement unless the public announcement, press release, or statement is either (a) issued jointly by the Parties or (b) before the release of the public announcement, press release, or statement, the releasing Party furnishes the other Party with a copy of such announcement, press release or statement, and obtains such other Party's approval with respect thereto. Notwithstanding the foregoing, no Party is prohibited from issuing or making any such public announcement, press release or statement, without obtaining approval from the other Party, if it is necessary to do so to comply with Applicable Laws (including in connection with the issuance of any Permit), legal proceedings or rules and regulations of any Governmental Authority or stock exchange having jurisdiction over such Party or any of its Affiliates, or if it is necessary to do so in connection with such Party's or its Affiliates' financial statements. The Parties agree that the Buyer must strictly comply with the obligations of the Texas Public Information Act as set forth in Chapter 552 of the Texas Government Code as such may be amended from time to time or its successor statute.

## **ARTICLE 8 FORCE MAJEURE EVENTS**

### 8.1 **Force Majeure Events**

(a) **Excuse.** Subject to Section 8.2, and except as expressly set forth herein, neither Party will be considered to have breached its obligations under this Agreement if performance of its obligations is prevented due to a Force Majeure Event. For the avoidance of doubt, Buyer obligations under Section 5.2 will not be excused by any Force Majeure Event.

(b) **Definition.** For purposes of this Agreement, "Force Majeure Event" means, subject to Section 8.1(c), any System Curtailment pursuant to Section 7.6(d) and any event or circumstance that wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent that: (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligations excused; (ii) the Party seeking to have its performance obligations excused has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under this Agreement, and which by the exercise of reasonable diligence such Party could not reasonably have been expected to avoid or overcome; and (iii) such event is not the direct or indirect result of the negligence or the failure of, or is caused by, the Party seeking to have its performance obligations excused. Force Majeure Events may include, to the extent consistent with the foregoing requirements, but are not limited to:

- (i) acts of a public enemy, war (whether declared or not), insurrection, riot, civil disturbance, rebellion, violent demonstrations, revolution, sabotage, or terrorist action;
- (ii) acts of God, including any effect of unusually severe natural elements, including earthquakes, floods, hurricanes, pandemics, epidemics, or similar cataclysmic occurrences;
- (iii) emergencies (including transmission load relief events and minimum generation emergencies) declared by the Transmission Provider or any other authorized



successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Facility or making it impossible for the Transmission Provider to transmit energy, including Energy to be delivered pursuant to this Agreement;

- (iv) strikes, work stoppages or labor disputes limited to any one or more of Seller, Seller's Affiliates or any other third party employed by Seller to work on the Facility or contracted by Seller to provide supplies or equipment for the Facility; and
- (v) breakage or failure of equipment, including a serial defect, insofar as such events actually do qualify as Force Majeure Events hereunder.

(c) **Exclusion.** Notwithstanding the definition set forth in Section 8.1(b), a Force Majeure Event does not include, and may not be based on, the following events or conditions:

- (i) Seller's ability to sell any or all of the Products at a price greater than the price set forth in this Agreement;
- (ii) Buyer's ability to purchase any or all of the Products at a price lower than the price set forth in this Agreement;
- (iii) The economic hardship of a Party;
- (iv) loss of Buyer's markets or reduction of Buyer's electricity usage; and
- (v) Seller's inability to obtain sufficient labor, equipment, materials or other resources necessary to build and operate the Facility (including the timely availability or delivery of any one or all of the foregoing) is caused by a Force Majeure Event of the specific type described in Section 8.1(b) above or as may be claimed by the relevant supplier pursuant to the force majeure provisions and/or related concepts of any of Seller's material equipment purchase contracts or the BOP/EPC Contract.

## 8.2 **Conditions; Resolution**

(a) **Claims of Force Majeure.** In addition to the conditions set forth in Section 8.1(a) and in the definition of Force Majeure Event, a Party may rely on a claim of a Force Majeure Event for purposes of this Agreement only to the extent that such Party:

- (i) provides prompt notice of such Force Majeure Event to the other Party giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement and, if applicable, the construction and operation of the Facility; and
- (ii) provides timely updates during the continuance of the Force Majeure Event or its consequences that (A) summarize the measures taken by the affected Party and that the affected Party plans to take in order to mitigate the impact of such Force Majeure Event and (B) provide an estimate of the expected duration of the period during which the performance by the affected Party of its material obligations under this

Agreement will be prevented or the construction or operation of the Facility, as applicable, will be adversely affected due to the Force Majeure Event.

(b) Effect of Force Majeure Event. Upon making a proper claim pursuant to Section 8.2(a), such Party's obligations of performance, only to the extent such performance is excused by the Force Majeure Event, shall be suspended for the duration of the Force Majeure Event, subject to the termination rights under Section 8.3. To the extent that a third-party to whom a Party's performance under this Agreement is reliant upon claims excused performance due to an event that would otherwise qualify as a Force Majeure Event under this Agreement, the affected Party shall be considered to have suffered a Force Majeure Event under this Agreement, provided that the other Party is promptly notified of such event in accordance with Section 8.2(a).

(c) Resumption of Performance. The affected Party shall provide prompt notice to the other Party once it is able to resume performance of its obligations following the occurrence of a Force Majeure Event or the impact on the construction or operation of the Facility resulting from such Force Majeure Event is resolved, as applicable.

### 8.3 Termination Due To Force Majeure Event

(a) Pre-Commercial Operation Date. If, prior to the Commercial Operation Date, Seller is prevented from performing its material obligations under this Agreement in order to achieve Commercial Operation [REDACTED] or more due to a Force Majeure Event, Seller may terminate this Agreement, without liability of either Party to the other Party (other than for obligations that arose prior to termination), with immediate effect.

(b) Post-Commercial Operation Date. In addition to and without limiting any other provisions of this Agreement, if, following the occurrence of the Commercial Operation Date, a Party is prevented from performing its material obligations under this Agreement for a [REDACTED] days or more due to a Force Majeure Event, the unaffected Party may terminate this Agreement, without liability of either Party to the other Party (other than for obligations that arose prior to termination), upon no less than 30 days' written notice given at any time while such performance continues to be prevented following the end of the 365-day period, except that (i) if prior to the expiration of such 365-day period, the affected Party has delivered to the unaffected Party a certificate of an independent engineer certifying that any remaining repairs or other remediation efforts necessary for the affected Party to resume performance of its obligations under this Agreement can be completed within an additional 180-day period following the expiration of the initial 365-day period, then the unaffected Party may not exercise its right to terminate this Agreement under this Section 8.3(b) unless the affected Party's performance remains prevented following the expiration of such [REDACTED], and (ii) if the affected Party has provided notice that it is able to resume performance of its obligations, and thereafter resumes such performance, as required by Section 8.2(c) prior to the early termination date designated in such notice, then this Agreement will not terminate.

**ARTICLE 9**  
**DEFAULT, REMEDIES, AND TERMINATION**

**9.1 Events of Default Generally**

(a) Mutual Events of Default. The occurrence with respect to a Party of any of the following events or conditions constitutes an event of default with respect to such Party (the events and conditions set forth in this Section 9.1(a) and Section 9.1(b), each an “Event of Default”):

- (i) such Party fails to make when due any payment (other than amounts disputed in good faith) due and owing under this Agreement, and such failure is not cured by such Party within 10 days of the other Party notifying such Party of such failure;
- (ii) any representation or warranty made by such Party in this Agreement is not true in all material respects as of the date made and such inaccuracy is not cured within 30 days after the other Party notifying such Party of such inaccuracy, which notice sets forth in reasonable detail the nature of the inaccuracy (provided, that if such default is not reasonably capable of being cured within such 30-day cure period but is reasonably capable of being cured within a 90-day cure period, the defaulting Party will have such additional time (not exceeding an additional 60 days) as is reasonably necessary to cure such default, if, prior to the end of the 30-day cure period the defaulting Party promptly commences and diligently pursues the cure of any such inaccurate representation or warranty;
- (iii) such Party is in material breach of its obligations under this Agreement (other than an obligation to make payment or an obligation that is otherwise specifically set forth as a separate Event of Default or for which there is an exclusive remedy) and such material breach is not remedied within 30 days after the other Party notifies such Party of such material breach, which notice sets forth in reasonable detail the nature of such material breach (provided, that if such default is not reasonably capable of being cured within the 30-day cure period but is reasonably capable of being cured within a 90-day cure period, the defaulting Party will have such additional time (not exceeding an additional 60 days) as is reasonably necessary to cure such default, if, prior to the end of the 30-day cure period the defaulting Party promptly commences and diligently pursues the cure of any such material breach of the obligations identified by the other Party;
- (iv) such Party becomes Bankrupt;
- (v) such Party fails to timely perform any of its obligations under Article 6; or
- (vi) such Party assigns or otherwise transfers this Agreement other than in accordance with Section 11.4.

(b) Seller Events of Default. In addition to the foregoing, the occurrence with respect to Seller of any of the following events or conditions constitutes an Event of Default with respect to such Seller:

- (i) Seller's Abandonment of construction or operation of the Facility and such failure continues for 30 days after Seller's receipt of written notice thereof from Buyer; and
- (ii) Seller fails to maintain insurance coverages required by Section 7.1(e) and such failure continues for 10 Business Days after Seller's receipt of written notice thereof from Buyer.

## 9.2 **Remedies; Termination for Default**

(a) **Termination for Default.** If an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party ("**Non-Defaulting Party**") may, subject to Section 9.3: (i) suspend performance of its obligations under this Agreement; (ii) withhold to the extent of its damages under this Agreement the payment of any amounts due to the Defaulting Party; (iii) by delivery of written notice to the Defaulting Party, designate a date no earlier than 30 days after the notice is deemed delivered as the early termination date in respect of this Agreement; (iv) exercise any other remedies as may be available to the Non-Defaulting Party under this Agreement or Applicable Law; or (v) exercise any combination of the foregoing.

(b) **Remedies.** Subject to Section 7.3(c), upon termination of this Agreement in connection with an Event of Default, the Non-Defaulting Party shall calculate its Economic Loss and Costs, if any, in respect of this Agreement. The Non-Defaulting Party shall aggregate all amounts owing between the Parties under this Agreement into a single amount by netting (i) all amounts due to the Defaulting Party under this Agreement, including, at the option of the Non-Defaulting Party, any Credit Support available to the Non-Defaulting Party against (ii) all amounts due to the Non-Defaulting Party under this Agreement, including the Non-Defaulting Party's Economic Loss and Costs, if any, such that all amounts due between the Parties are netted into a single amount (the "**Termination Amount**") payable by one Party to the other Party. As soon as practicable following termination, but not later than 30 days thereafter, the Non-Defaulting Party shall provide an invoice to the Defaulting Party specifying the Termination Amount due to or from the Defaulting Party and a written statement explaining in reasonable detail the calculation of the Termination Amount. If the Defaulting Party owes the Termination Amount to the Non-Defaulting Party, the Defaulting Party shall pay the Termination Amount within 10 Business Days following the Defaulting Party's receipt of the Non-Defaulting Party's invoice. If the Non-Defaulting Party owes the Termination Amount to the Defaulting Party, the Non-Defaulting Party shall pay the Termination Amount within 10 Business Days following the Defaulting Party's receipt of the Non-Defaulting Party's invoice. For purposes of the foregoing:

"**Costs**" means, with respect to the Non-Defaulting Party, the Commercially Reasonable brokerage fees, commissions, and other similar transaction costs and expenses incurred by the Non-Defaulting Party to a Person other than a Party or an Affiliate of such Party in connection with terminating any arrangement pursuant to which it has hedged its obligations under this Agreement or in entering into new arrangements to replace this Agreement, and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement. For the avoidance of doubt, Buyer is entering into this Agreement as a hedge against its obligation to serve Buyer's customers as an LSE.

"**Economic Loss**" means, with respect to the Non-Defaulting Party, the amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the early termination of this Agreement. If Seller is the Non-Defaulting Party, its economic loss will be the

positive amount, if any, equal to (x) the present value of the payments it would receive under this Agreement for Product *minus* (y) the present value of the payments it would receive for Product under transactions replacing this Agreement, in each case for the period from the early termination date through the scheduled end of the Delivery Term and determined by Seller in a Commercially Reasonable manner. If Buyer is the Non-Defaulting Party, its economic loss will be the positive amount, if any, equal to (x) the present value of the payments it would be required to make under transactions replacing this Agreement *minus* (y) the present value of the payments it would be required to make for Product under this Agreement, in each case for the period from the early termination date through the scheduled end of the Delivery Term and determined by Buyer in a Commercially Reasonable manner. The Non-Defaulting Party is not required to enter into any replacement transaction in order to determine its Economic Loss; *provided; however*, for the avoidance of doubt, in calculating Economic Loss hereunder, only the value of the payments associated with any transactions replacing this Agreement, whether entered into by Buyer or Seller hereunder, shall be included in any such calculation and neither Party shall be entitled to include any Costs associated with any such transactions in the calculation of Economic Loss.

### 9.3 Limitations

(a) GENERAL LIMITATION. TO THE EXTENT ALLOWED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY APPLICABLE IMMUNITY, THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED FOR IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE NON-DEFAULTING PARTY, WITH THE OBLIGOR'S LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED AND DISCLAIMED. UNLESS EXPRESSLY HEREIN PROVIDED AND EXCEPT WITH RESPECT TO CLAIMS FOR INDEMNIFICATION UNDER SECTION 9.4, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES A PARTY IS REQUIRED TO PAY HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS AND ARE NOT AND NOT INTENDED TO BE A PENALTY.

(b) PRE-COMMERCIAL OPERATION DATE LIMITATION. PRIOR TO THE OCCURRENCE OF THE COMMERCIAL OPERATION DATE, SELLER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT OR ANY CLAIMS ARISING HEREUNDER REGARDLESS OF THE

NATURE OF SUCH CLAIMS FOR DAMAGES IS LIMITED TO AND SHALL NOT EXCEED THE MAXIMUM PRE-COD DAMAGES CAP, NOTWITHSTANDING THE CREDIT SUPPORT AMOUNT THEN APPLICABLE TO SELLER.

#### 9.4 **Indemnification**

(a) **Indemnification by Seller.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS BUYER, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND OTHER REPRESENTATIVES (COLLECTIVELY, THE “**BUYER INDEMNITEES**”), FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, ACTIONS, SUITS, DEMANDS, LOSSES, LIABILITIES, DAMAGES, FINES, PENALTIES, EXPENSES, LIENS, SECURITY INTERESTS, ENCUMBRANCES, OR OTHER ADVERSE CLAIMS (INCLUDING REASONABLE LEGAL COSTS AND ATTORNEYS’ FEES, BOTH AT TRIAL AND ON APPEAL) (COLLECTIVELY, “**LOSSES**”), ACTUALLY OR ALLEGEDLY RESULTING FROM, OR ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, (I) THE PERFORMANCE BY SELLER OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR (II) FOR OR ON ACCOUNT OF INJURY, BODILY OR OTHERWISE, TO, OR DEATH OF ANY PERSON WITHIN OR BEING A PART OF THE BUYER INDEMNITEES, EXCEPTING ONLY TO THE EXTENT SUCH LOSSES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY PERSON WITHIN OR CONSTITUTING ANY ONE OF THE BUYER INDEMNITEES.

(b) **INDEMNIFICATION BY BUYER.** TO THE MAXIMUM EXTENT PERMITTED BY THE LAWS OF THE STATE OF TEXAS AND WITHOUT WAIVING ANY APPLICABLE IMMUNITIES, BUYER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER, ITS AFFILIATES, AND EACH OF ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, AND OTHER REPRESENTATIVES (COLLECTIVELY, THE “**SELLER INDEMNITEES**” TOGETHER WITH BUYER INDEMNITEES, WHETHER ONE OR MORE, THE “**INDEMNITEE**”) FROM AND AGAINST ANY AND ALL LOSSES ACTUALLY OR ALLEGEDLY RESULTING FROM, OR ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, (I) THE PERFORMANCE BY BUYER OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR (II) FOR OR ON ACCOUNT OF INJURY, BODILY OR OTHERWISE, TO, OR DEATH OF, ANY PERSON WITHIN OR BEING A PART OF THE SELLER INDEMNITEES, EXCEPTING ONLY TO THE EXTENT SUCH LOSSES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY PERSON WITHIN OR CONSTITUTING ANY ONE OF THE SELLER INDEMNITEES.

(c) **ADDITIONAL CROSS INDEMNITY.** WITHOUT LIMITING **SECTIONS 9.4(A) AND 9.4(B)**, SELLER SHALL RELEASE, INDEMNIFY AND HOLD HARMLESS THE BUYER INDEMNITEES FROM AND AGAINST ALL LOSSES RELATED TO PRODUCT PRIOR TO ITS DELIVERY BY SELLER AT THE APPLICABLE DELIVERY POINT, AND BUYER, SUBJECT TO THE LAWS OF THE STATE OF TEXAS AND WITHOUT WAIVING ANY APPLICABLE IMMUNITIES SHALL RELEASE, INDEMNIFY AND HOLD HARMLESS THE SELLER INDEMNITEES FROM AND AGAINST ALL LOSSES RELATED TO PRODUCT DELIVERED TO BUYER AT AND AFTER THE APPLICABLE DELIVERY POINT, EXCEPT IN EACH CASE TO THE EXTENT SUCH LOSSES ARE ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR A BREACH OF THIS AGREEMENT BY ANY MEMBER OF THE BUYER INDEMNITEES OR THE SELLER INDEMNITEES, RESPECTIVELY, SEEKING INDEMNIFICATION.

(d) **Procedure.** An Indemnitee that becomes entitled to indemnification or defense under this **Section 9.4** must notify the Indemnifying Party of any claim or proceeding in respect of which it is to be indemnified or defended as soon as reasonably practicable after the Indemnitee obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice shall not excuse the obligation of

the Indemnifying Party to indemnify or defend the Indemnitee except to the extent failure to provide notice adversely affects the Indemnifying Party's interests in a material respect. The Indemnifying Party shall, within 30 days after the date the Indemnifying Party is notified of any such claim, assume the defense thereof with counsel designated by the Indemnifying Party but reasonably acceptable to the Indemnitee; except that if the defendants in any such action include both the Indemnitee and the Indemnifying Party or if the claim seeks an order of injunctive relief or other equitable remedies, involves criminal liability, or involves any Governmental Authority, then the Indemnitee shall have the right to select and be represented by separate counsel designated by the Indemnitee, at the expense of the Indemnitee. If the Indemnifying Party fails to assume the defense of a claim as required under this Agreement, the Indemnitee may, at the expense of the Indemnifying Party, contest, settle, or pay such claim, subject, in all cases, to the Indemnitee providing its consent to any such action and that any such action does not adversely or materially disadvantage the Indemnifying Party. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

## **ARTICLE 10**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

#### **10.1 Seller Representations, Warranties and Covenants**

(a) General Representations. Seller represents and warrants to Buyer as of the Execution Date and throughout the Term that:

- (i) Seller is duly organized and validly existing as a limited liability company under the laws of the State of Texas, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (ii) Subject to the satisfaction of the Condition Precedent set out in Section 2.1(c), Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and, all such actions have been duly authorized by all necessary proceedings on its part;
- (iii) this Agreement has been duly and validly executed and delivered by Seller and, as of the Execution Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, subject only to the satisfaction of the Condition Precedent set out in Section 2.1(c) and except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (iv) there are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;

- (v) the execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any Applicable Laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected;
- (vi) there is no proceeding under applicable bankruptcy or insolvency laws contemplated by Seller or, to Seller's knowledge, threatened against it;
- (vii) neither it nor any of its employees, agents, or other Representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or other Representatives for the purpose of securing the Agreement or securing favorable treatment under this Agreement;
- (viii) Seller has or will have all legal rights necessary for the Seller to enter upon and occupy the Site for the purpose of constructing, operating and maintaining the Facility for the Term;
- (ix) Seller shall maintain all leases or other land grants necessary for the construction, operation and maintenance of the Facility as valid for the Term;
- (x) Seller has previously entered into the Interconnection Agreement for the Facility and shall maintain the Interconnection Agreement as valid for the Term; and
- (xi) Seller warrants that the Committed Capacity will be made exclusively available to Buyer at all times during the Term.

(b) Additional Seller Representations, Warranties and Covenants. Seller further represents and warrants to Buyer as of each delivery of any Product under this Agreement that:

- (i) Seller has (or will have prior to the Commercial Operation Date), to the extent required under Applicable Law, all required regulatory authority to make wholesale sales of Energy from the Facility;
- (ii) the Products are being delivered to Buyer free and clear of any liens, other encumbrances, or defects in title;
- (iii) the Facility satisfies the definition of a "renewable resource" under the Applicable RPS and the requirements for eligibility to produce RECs under the Applicable RPS, in each case, as of the date of such delivery; *provided, however*, unless otherwise adopted in accordance with the provisions of Section 3.3(f), Seller makes no representation, warranty or covenant as to the eligibility of the Facility to satisfy or otherwise be in compliance with any Future RPS or the Facility's eligibility to produce, generate or have issued Future Environmental Attributes under any such Future RPS;
- (iv) the RECs and other Environmental Attributes delivered to Buyer meet the requirements of the Applicable RPS as of the date of such delivery;



- (v) the Environmental Attributes delivered to Buyer have not been sold, retired, claimed, or represented as a part of any electric product or sales, or used to satisfy any renewable energy, greenhouse gas, or other environmental attributes obligation under any applicable voluntary program in any jurisdiction or any Applicable Laws; and
- (vi) Seller, and any guarantor of its obligations under this Agreement, if any, is an “eligible contract participant” as that term is defined in the United States Commodity Exchange Act, as modified and amended from time to time.

## 10.2 **Buyer Representations and Warranties**

Buyer represents and warrants to Seller as of the Execution Date and throughout the Term that:

- (i) Buyer is duly organized and validly existing as a municipal corporation under the laws of the State of Texas, and has the lawful power to engage in the business it presently conducts and contemplates conducting for all purposes of this Agreement and is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (ii) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part and as required by it under Applicable Laws, including, but not limited to, its receipt of all authorizations required to be obtained from the City Council of Buyer;
- (iii) this Agreement has been duly and validly executed and delivered by Buyer and, as of the Execution Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent (A) that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity or (B) of certain constitutional limitations to which Buyer is subject requiring the City Council of Buyer to approve a budget for each fiscal year during the Term, in which budget Buyer reflects its payment obligations hereunder as operating expenses associated with its continuing obligations to purchase the Products and Buyer (through its staff and other applicable Representatives) uses its Commercially Reasonable Efforts to obtain such budgetary approval by the City Council;
- (iv) there are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer’s ability to perform its obligations under this Agreement;
- (v) the execution, delivery and performance of this Agreement by Buyer will not conflict with its governing documents, any Applicable Laws to which it is subject,

or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;

- (vi) there is no proceeding under applicable bankruptcy or insolvency laws contemplated by Buyer or, to Buyer's knowledge, threatened against it;
- (vii) Buyer is an "eligible contract participant" as that term is defined in the United States Commodity Exchange Act, as modified and amended from time to time; and
- (viii) Buyer's obligations under this Agreement are and shall qualify as operating expenses of Buyer in relation to the purchase of the Products by Buyer which enjoy first priority payment at all times under any and all bond or other ordinances and indentures to which Buyer is a party.

### 10.3 **Limitation on Representations**

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE MADE BY SELLER AS TO THE PRODUCTS, AND ANY AND ALL IMPLIED WARRANTIES ARE HEREBY DISCLAIMED AND WAIVED IN ALL RESPECTS.

## **ARTICLE 11 MISCELLANEOUS**

### 11.1 **Notices**

All written notices, requests, statements, demands, and other communications under this Agreement must, unless otherwise specified herein, be delivered in person, sent by reliable overnight courier, registered or certified mail, postage prepaid, or electronic mail to the address of the Party specified in Exhibit D. Notice by hand delivery is effective at the close of business on the day actually received by the recipient, if received during a Business Day, and otherwise shall be effective at the beginning of the next Business Day. Notice by overnight United States mail or courier is effective on the next Business Day after it was sent. Notice by registered or certified mail, postage prepaid, shall be effective on the third Business Day after it was sent. Notice sent by facsimile transmission or electronic mail will be recognized and shall be deemed effective at the close of business on the day actually received by the recipient, if received during a Business Day, and otherwise shall be effective at the beginning of the next Business Day. A Party may change its addresses by providing written notice of such change of address to the other Party in accordance herewith, but not less than 30 days prior to the effective date of any such change of address.

### 11.2 **Business Conduct Clauses**

(a) **Compliance with Laws**. Each Party shall at all times comply with all Applicable Laws, except to the extent such non-compliance is unrelated to or would not have a material adverse effect on such Party's ability to perform its obligations under this Agreement.

(b) **Anti-Bribery/Anti-Corruption/FCPA**. In furtherance of the foregoing, each Party shall comply with: (i) all Applicable Laws relating to anti-corruption or anti-bribery, including legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating

Bribery of Foreign Public Officials in International Business Transactions” or other anti-corruption/anti-bribery convention; and (ii) the requirements of the Foreign Corrupt Practices Act, as amended, (“FCPA”) (15 U.S.C. §§78dd-1, et. seq.). Each Party covenants not to directly or indirectly pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from the other Party to a non-U.S. public official or any person in violation of the FCPA or in violation of any Applicable Laws relating to anti-corruption or anti-bribery. As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.

(c) Buyer Required Terms. In addition to the foregoing, Seller acknowledges and accepts the terms more fully set out in Exhibit B as additional business conduct clauses required by Buyer to be agreed to as part of this Agreement.

### 11.3 Confidentiality

(a) Obligation of Confidentiality. Each Party shall hold in confidence all Confidential Information of the other Party. The obligation of confidentiality extends to all Confidential Information, whether exchanged orally or in written or electronic form.

(b) Permitted Disclosure. Each Party has the right to disclose Confidential Information of the other Party to: (i) a Governmental Authority to the extent legally required by the Governmental Authority or under Applicable Law on the condition that, if appropriate, Commercially Reasonable Efforts are undertaken to receive confidential treatment by such Governmental Authority, (ii) its advisors, auditors, legal counsel and insurers, (iii) its Affiliates and its and their respective officers, directors, members, managers, employees and agents that have a need to know such information, (iv) its service providers to the extent required in connection with the performance of its obligations hereunder, (v) its partners, investors, lenders and bona fide potential investors and lenders; and (vi) bona fide potential purchasers (and their representatives) of a direct or indirect interest in receiving Party or, with respect to Seller, the Facility. The right of the receiving Party to disclose Confidential Information pursuant to clauses (ii) through (vi) hereof is subject to the condition that the recipient must agree, or otherwise have an obligation, to maintain the confidentiality of the Confidential Information consistent with the terms hereof.

(c) Liability for Breach. Each Party, as the receiving Party, is liable for any failure by a recipient of Confidential Information disclosed by the receiving Party (other than a Governmental Authority) to maintain the confidentiality of such Confidential Information in accordance with the requirements of this Section 11.3.

(d) Remedies. The Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations contained in this Section 11.3.

(e) Prior Agreements. To the extent that the Parties are party to or otherwise bound by the terms of any agreement regarding confidentiality regarding the subject matter of this Agreement, any such agreement between the Parties is replaced and superseded by the confidentiality provisions of this Section 11.3 and in the event that the Parties are otherwise bound by the terms of an agreement regarding confidentiality, as between the Parties, such other agreement will no longer apply to this Agreement (save for any breach or default thereunder by a Party arising prior to the Execution Date, which breach or default shall remain subject to the terms of such prior agreement), and the obligations of the Parties regarding confidentiality will instead be replaced and superseded by the obligations under this Section 11.3.

#### 11.4 Assignment

(a) Consent Required. Except as provided in this Section 11.4, neither Party may assign or otherwise transfer this Agreement without the other Party's prior written consent, which consent may not be unreasonably delayed, conditioned or withheld. During the development phase of the Facility and at all times prior to the Commercial Operation Date, Seller may not assign this Agreement to a Permitted Transferee without consent of Buyer, such consent not to be unreasonably withheld. Any assignment or other transfer in violation of this provision is null and void.

(b) Permitted Assignment. Notwithstanding the foregoing:

- (i) Buyer's consent is not required for Seller to assign this Agreement (A) at any time during the Term for collateral purposes to a Facility Lender (including the assignment of the right of Seller to the payments to be made hereunder by Buyer for the Products), and (B) at any time after the Commercial Operation Date (1) to a Permitted Transferee generally or in connection with a sale of the Facility to such Permitted Transferee, or (2) to an Affiliate of Seller that has the ability to perform Seller's obligations under this Agreement, in each case (other than pursuant to a collateral assignment) subject to the condition that such assignee has assumed in writing all of the obligations of Seller under this Agreement (including Seller's obligations under Section 6.1) and agreed to be bound by all the terms and conditions of this Agreement accruing or arising from and after the effectiveness of such assignment. Seller shall notify Buyer of any such assignment by no later than 30 days after the assignment.
- (ii) Seller's consent is not required for Buyer to assign this Agreement to an Affiliate of Buyer, so long as such assignee has assumed in writing all of the obligations of Buyer under this Agreement (including Buyer's obligations under Section 6.2) and agreed to be bound by all the terms and conditions of this Agreement accruing or arising from and after the effectiveness of such assignment. Buyer shall notify Seller of any such assignment by no later than 30 days after the assignment.
- (iii) Following a permitted assignment under this Section 11.4(b), the assignee shall be fully released from all obligations and liabilities under this Agreement, save to the extent of any breach or Event of Default arising prior to the effective date of any such permitted assignment.

(c) Accommodation of Facility Lenders and Tax Equity Investors. To facilitate Seller's efforts to obtain financing to construct and operate the Facility, Buyer will make reasonable, good faith efforts to provide such consents to assignments, certifications, representations, estoppels, information or other documents as may be reasonably requested by Seller, a Facility Lender or Tax Equity Investor in connection with the financing of the Facility. Seller shall reimburse Buyer for the reasonable, out-of-pocket costs and expenses (including the fees and expenses of counsel) incurred by Buyer in the preparation, negotiation, execution or delivery of any documents requested by Seller, a Facility Lender or Tax Equity Investor pursuant to this Section 11.4(c).

### 11.5 **Market Disruption Event**

If a Market Disruption Event occurs, the Parties shall negotiate in good faith with the objective of reaching agreement on a replacement Settlement Hub or other solution that, to the extent practicable, most closely reflects the intended allocation of market price risk (including the basis differential between the existing Settlement Hub and the Facility's pricing node) as is contemplated by the specified Settlement Hub under this Agreement. If after 30 days of negotiating in good faith, the Parties are unable to determine a replacement Settlement Hub or other solution, the Parties may pursue such other methods of dispute resolution to resolve the dispute as may be available. Until such time as the Parties have, following the occurrence of the Market Disruption Event, reached agreement regarding, and executed such amendment to this Agreement as is necessary to implement, the agreed replacement Settlement Hub or other solution, the Parties will not be required to schedule the delivery of the Committed Energy. Upon execution of such amendment to this Agreement as is necessary to implement the agreed replacement Settlement Hub or other solution, the Parties will in the next invoice issued pursuant to Section 5.1 make such payments as are required to settle retroactively to the occurrence of the Market Disruption Event based on the agreed replacement Settlement Hub or other solution.

### 11.6 **Waiver of Rights**

Failure by a Party to exercise any of its rights or remedies under this Agreement does not constitute a waiver of such rights or remedies. Neither Party will be deemed to have waived any right or remedy to which it may be entitled, any provision of this Agreement, or any failure of default of the other Party unless it has made such waiver specifically in writing or unless such waiver is specifically provided for under the terms of this Agreement.

### 11.7 **Section Headings**

The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein and are to be ignored for the purposes of construction.

### 11.8 **No Third Party Beneficiary**

This Agreement is for the sole and exclusive benefit of the Parties and is not intended to create a contractual relationship with, or cause of action or other rights in favor of, any Person other than the Parties.

### 11.9 **Forward Contract**

Each Party acknowledges, intends, and to the extent applicable agrees that: (a) this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" and each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; (b) all payments made or to be made by a Party pursuant to this Agreement, including the application by a Party of Credit Support to any amounts due and owing to such Party, constitute "settlement payments" within the meaning of the United States Bankruptcy Code and all transfers of Credit Support by a Party or on its behalf under this Agreement constitute "margin payments" within the meaning of the United States Bankruptcy Code; and (c) its rights under Section 9.2 of this Agreement constitute a "contractual right to liquidate, terminate or accelerate" or "contractual right to liquidate, terminate, accelerate, or offset under a master netting agreement and across contracts" within the meaning of the United States Bankruptcy Code.

#### 11.10 **Governing Law; Jury Waiver**

(a) **Governing Law.** THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF A DIFFERENT JURISDICTION) GOVERN ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ITS INTERPRETATION, CONSTRUCTION, PERFORMANCE, AND ENFORCEMENT.

(b) **Jury Waiver.** EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE IMPLEMENTATION OF THIS AGREEMENT.

#### 11.11 **Venue**

The Parties submit to the exclusive jurisdiction of the United States District Court for the Northern District of Texas, unless such court refuses jurisdiction, in which case the Parties submit to the exclusive jurisdiction of the courts of the State of Texas sitting in Denton County, Texas. Each Party waives (i) any objection it may have at any time to the laying of any suit, action, or other proceedings brought in any such court; (ii) any claim that such suit, action, or other proceeding has been brought in an inconvenient forum; and (iii) any right to object, with respect to such suit, action, or other proceeding, that the court does not have any jurisdiction over the Party. This **Section 11.11** does not prohibit a Party from bringing an action to enforce a money judgment in any other jurisdiction.

#### 11.12 **Nature of Relationship**

The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement will not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Neither Party has any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.

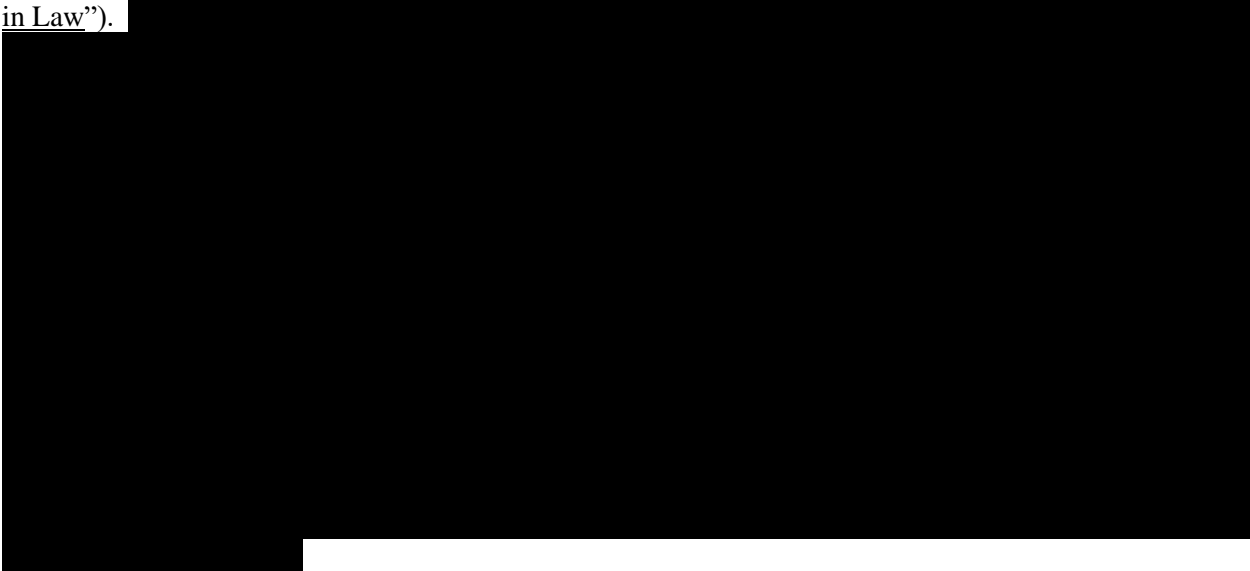
#### 11.13 **Severability**

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement will not be affected and will continue in full force and effect. The Parties shall, however, in good faith attempt to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

#### 11.14 **Change in Law**

██████ The Parties agree that the Contract Price will not be affected by any Change in Law, including any amendment, supplement or modification to an Applicable RPS (including a Future RPS that has been adopted by the Parties in accordance with **Section 3.3(f)**), that alters either Buyer's or Seller's costs in connection with this Agreement, Seller's operation of the Facility, or the value of the Product, including any Committed Capacity Attributes or Environmental Attributes delivered or transferred under this

Agreement, or affects in any other material way the purpose or economics of this Agreement (a “Change in Law”).



(c)



(d) For the avoidance of doubt,

[REDACTED]

[REDACTED]

#### 11.15 **Counterparts**

This Agreement may be executed in one or more counterparts and by different Parties in separate counterparts, each of which will be deemed an original and all of which when taken together constitute but a single agreement. The delivery of an executed counterpart to this Agreement by electronic means is effective for all purposes as the delivery of a manually executed counterpart. This Agreement may be stored by the Parties electronically and the reproduction in tangible form of an electronically stored version of this Agreement will be deemed to be an “original” for all purposes.

#### 11.16 **Dispute Resolution**

Any dispute under this Agreement between Seller and Buyer must, at the request of any Party, be referred to a senior representative of each of the Parties for resolution on an informal basis as promptly as practicable, with each such senior representative having the appropriate level of authority to resolve any such dispute. The negotiation between the Parties and any documents exchanged in connection with the negotiation are confidential and considered statements made in compromise and settlement negotiations within the meaning of the Federal Rule of Evidence 408 and any applicable state law evidentiary rules or doctrines. In the event the Parties are unable to satisfactorily resolve the dispute within 30 Business Days of such referral or such other period as the Parties may mutually agree, subject to any extensions of time as may be mutually agreed upon in writing, either Party may pursue such remedies as may be available to it under Applicable Law or in equity in order to resolve such dispute. Notwithstanding the foregoing, a



request to resolve a dispute on an informal basis does not restrict a Party's right to bring an action seeking injunctive relief in respect of this Agreement.

**11.17 Further Assurances**

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 11.17.

**11.18 Construction**

This Agreement was jointly prepared by the Parties by and through their respective legal counsel, and any uncertainty or ambiguity existing herein will not be interpreted against either Party on the basis that such Party drafted the language.

**11.19 Entire Agreement; Integration; Amendment and Restatement**

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof is binding upon the Parties, unless such amendment, addition, or modification is in writing and signed by a duly authorized officer or representative of each Party.

*[signature page follows]*

The Parties have caused this Power Purchase Agreement to be executed by their duly authorized Representatives as of the Execution Date.

**SELLER:**

**YELLOW VIKING DEVELOPMENT ONE,  
LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**

**CITY OF DENTON, TEXAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## DESCRIPTION OF THE FACILITY

Facility Name: Yellow Viking Development One

Anticipated Nameplate Capacity:

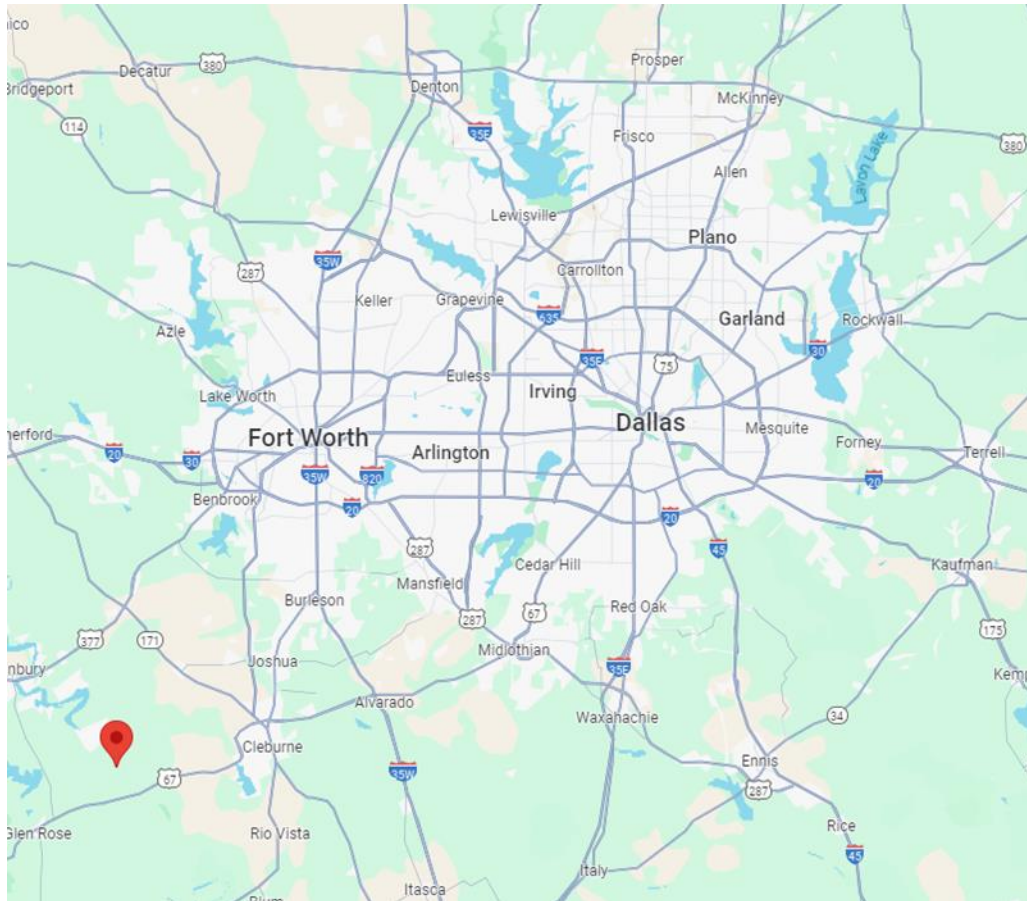
Owner: Yellow Viking Development One, LLC

Location:

Technology: Single axis bifacial PV. Subject to the terms and conditions of this Agreement, the Facility design, equipment selection, and planned operations are decisions made at Seller's sole discretion.

Description of the Site: The Site consist of approximately [REDACTED] located approximately at the coordinates [REDACTED]

Map:



## Exhibit B

### **BUYER REQUIRED TERMS**

The following provisions are hereby made a part of this Agreement as if incorporated therein and are acknowledged and agreed to by Seller:

#### **1. Prohibition on Contracts with Companies Boycotting Israel**

Seller acknowledges that in accordance with Chapter 2271 of the Texas Government Code, Buyer is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this Agreement, Seller certifies that Seller’s signature provides written verification to the Buyer that Seller: (1) does not boycott Israel; and (2) will not boycott Israel during the Term of the Agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **2. Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

Seller acknowledges that in accordance with Chapter 2274 of the Texas Government Code, Buyer is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this Agreement, Seller certifies that Seller’s signature provides written verification to the Buyer that Seller: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the Agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **3. Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations**

Seller acknowledges that in accordance with Chapter 2274 of the Texas Government Code, Buyer is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this Agreement, Seller certifies that Seller’s signature provides written verification to the Buyer that Seller: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

#### **4. Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization**

Sections 2252 and 2270 of the Texas Government Code restricts Buyer from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this Agreement, Seller certifies that Seller’s signature provides written verification to the Buyer that Seller, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this Agreement and will not become ineligible to receive payments under this Agreement by doing business with Iran, Sudan, or a foreign terrorist***

**organization.** Failure to meet or maintain the requirements under this provision will be considered a material breach.

**5. Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies**

The Buyer may terminate this Agreement immediately without any further liability if the Buyer determines, in its sole judgment, that this Agreement meets the requirements under Chapter 2274, and Seller is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

**6. Transact Electronically**

The Parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

**7. No Waiver of Sovereign Immunity**

The Parties expressly agree that no provision of the Agreement is in any way intended to constitute a waiver by the Buyer of any immunities from suit or from liability that the Buyer may have by operation of Applicable Law.

**8. Drug Free Workplace**

The Seller shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Seller shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**9. Texas Public Information Act**

Notwithstanding any other provision of Section 11.3 of this Agreement, the Parties understand that Buyer is a governmental entity and is required to comply, and Buyer does hereby agree to comply, with the Texas Public Information Act (Chapter 552 of the Texas Government Code) when responding to requests for records in its possession except where the information is considered public power utility competitive information protected by the provisions of the Texas Government Code, Sections 552.101, 552.104, 552.110 and/or 552.133. Disclosure of information required by the Texas Public Information Act shall not constitute a breach of any provision contained herein if so ordered by the State of Texas Attorney General. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement is confidential, commercially sensitive information protected from disclosure pursuant to the Texas Public Information Act. In the event that Buyer is requested or required by legal or regulatory authority to disclose this any Confidential Information, Buyer shall promptly notify Seller of such request or requirement prior to disclosure, if permitted by Applicable Law, so that Seller may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained, Buyer agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

**10. Prevailing Wage Rates**

The Seller shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website [www.wdol.gov](http://www.wdol.gov) for Denton County, Texas (WD-2509).

**11. Insurance**

City is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self- insurance by City shall, without further requirement, satisfy all insurance obligations of City under the Agreement.

**12. Limitations.**

City is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on City property; disclaimers and limitations of warranties; disclaimers and limitation of liability for damages; waivers, disclaimers, and limitation on litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on City, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

## **Exhibit C**

### **INSURANCE REQUIREMENTS**

Within 10 days of the Commercial Operation Date, Seller shall procure and maintain the following minimum insurance, with insurers rated “A-” VII or higher by A.M. Best’s Key Rating Guide, that are licensed to do business in Texas:

- (a) Workers’ Compensation Insurance for statutory obligations imposed by applicable laws, including, where applicable, the Alternate Employer Endorsement, the United States Longshoremen’s and Harbor Workers’ Act, the Maritime Coverage and the Jones Act;
- (b) Employers’ Liability Insurance, including Occupational Disease, shall be provided with a limit of (i) One Million Dollars (\$1,000,000) for bodily injury per accident, (ii) One Million Dollars (\$1,000,000) for bodily injury by disease per policy, and (iii) One Million Dollars (\$1,000,000) for bodily injury by disease per employee;
- (c) Business Automobile Liability Insurance which shall apply to all owned, non-owned, leased, and hired automobiles with a limit of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage;
- (d) General Liability Insurance which shall apply to liability arising out of premises, operations, bodily injury, property damage, products and completed operations and liability insured under and insured contract (contractual liability), with a limit of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate. The products and completed operations coverage insurance shall be provided for the duration of any applicable warranty period;
- (e) Excess Liability Insurance which shall apply to Employers Liability, Commercial General Liability and Business Automobile Liability Insurance, required in (b), (c), and (d) above, with a limit of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate;
- (f) Broad Form Property Insurance with limits of insurance written on a probable maximum loss basis, including sublimits for wind, earthquake, and flood exposures.

Except for Workers’ Compensation Insurance, Buyer shall be endorsed as an additional insured on Seller’s insurance policies required to be maintained under the Agreement and such policies shall provide for a waiver of subrogation in favor of Buyer. All policies of insurance required to be maintained by Seller hereunder shall provide for a severability of interests clause and include a provision that Sellers’s insurance policies are to be primary and non-contributory to any insurance that may be maintained by or on behalf of Buyer.

In the event that any policy furnished by Seller provides for coverage on a “claims made” basis, the retroactive date of the policy shall be the same as the effective date of the Agreement, or such other date, as to protect the interest of Buyer. Furthermore, for all policies furnished on a “claims made” basis, Seller’s providing of such coverage shall survive the termination of the Agreement and the expiration of any applicable warranty period, until the expiration of the maximum statutory period of limitations in the State of Texas for actions based in contract or in tort. If coverage is on “occurrence” basis, Seller shall maintain such insurance during the entire term of the Agreement.

Seller shall promptly provide evidence of the minimum insurance coverage required under the Agreement in the form of an ACORD certificate or other certificate of insurance. If any of the required insurance is cancelled or non-renewed, Seller shall within thirty (30) days provide written notice to Buyer and file a new certificate of insurance with Buyer, demonstrating that the required insurance coverage to be maintained hereunder has been extended or replaced. Neither Seller's failure to provide evidence of minimum coverage of insurance following Buyer's request, nor Buyer's decision to not make such request, shall release Seller from its obligation to maintain the minimum coverage provided for in this Exhibit C.

Seller shall be responsible for covering all deductibles associated with the foregoing insurance coverage.



**Exhibit D**

**NOTICE INFORMATION**

If to Buyer:

Address: Denton Municipal Electric  
1659 Spencer Rd.  
Denton, TX 76205  
Attn: General Manager  
Email: [dmecompliance@cityofdenton.com](mailto:dmecompliance@cityofdenton.com)

*With a copy to:*

Address: City of Denton  
601 East Hickory St.  
Denton, TX 76205  
Attn: City Attorney  
Email: [legal@cityofdenton.com](mailto:legal@cityofdenton.com)

If to Seller:

Address: Yellow Viking Development One, LLC  
c/o Osaka Gas USA Corporation  
1 North Lexington Ave., Suite 1400  
White Plains, NY 10601

Attn: Renewables & Grid Solutions Team

Email: [renewables-grid-solutions@osakagasusa.com](mailto:renewables-grid-solutions@osakagasusa.com)

*With a copy to:*

Address: Yellow Viking Development One, LLC  
c/o Osaka Gas USA Corporation  
1330 Post Oak Blvd., Suite 1900  
Houston, Texas 77056

Attn: Legal & Compliance Office

Email: [LCO@osakagasusa.com](mailto:LCO@osakagasusa.com)

## Exhibit E

## BENCHMARK QUANTITY

[illegible]

\_\_\_\_\_

**Exhibit F**  
**FORM OF INVOICE**

**Yellow Viking Development One, LLC**

1330 Post Oak Blvd  
Suite 1900  
Houston, TX 77056  
Attn:  
Email:

**INVOICE**

INVOICE #  
DATE:

To:  
**City of Denton**  
Address  
Attn:

**WIRE INSTRUCTIONS FOR YELLOW VIKING  
DEVELOPMENT ONE, LLC:**

[Bank Name]  
[Bank Address]  
:  
ACCT #:  
SWIFT #:

DEPARTMENT	CONTACT	P.O. NUMBER	TAX ID	Beginning	Ending

**GENERATION**

Energy	On Peak MWh	Off Peak MWh	Total MWh
Total			

**CHARGES**

Energy	MWh	Rate	\$
Total			

Administrative			\$
Administrative Costs			
Total			

Subtotal	
Sales Tax	
Total Due (USD)	

## Exhibit G

### GEP Damages Calculation

In accordance with the provisions in Section 7.5(d), GEP Damages means the liquidated damages payment due by Seller to Buyer for a particular Performance Measurement Period, calculated as follows:

$$[(A - B) \times (C - D)]$$

Where:

A = the Guaranteed Energy Production for the Performance Measurement Period, in MWh

B = Sum of Delivered Energy plus Deemed Delivered Energy, if any, over the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the simple average of the RTSPP for all (15) minute settlement periods [REDACTED]

[REDACTED] in the Performance Measurement Period, as published by ERCOT, for pricing at the Settlement Hub

D = the Contract Price

If the difference between C and D is negative, no GEP Damages shall be payable from Seller to Buyer for the applicable Performance Measurement Period.

In the event that GEP Damages for each of two (2) consecutive Performance Measurement Periods exceeds [REDACTED] ("Maximum GEP Damages Cap"), Seller may terminate the Agreement consistent with the notice and cure provisions in Section 9.2, in which event Seller will pay to Buyer the full value of the Maximum GEP Damages Cap, less any amount of GEP Damages already received by Buyer, if any, for the first of the applicable two (2) consecutive Performance Measurement Periods. If Seller fails to make timely payment of the foregoing amount of GEP Damages to Buyer, Seller may draw on the Seller Operating Period Credit Support for payment of the full value of the of the GEP Damages then owing to Buyer (which value will not exceed the Maximum GEP Damages Cap).

For the avoidance of doubt, the provision "each of two (2) consecutive Performance Measurement Periods" set out above is intended by the Parties to mean that each two (2) consecutive Performance Measurement Periods following the first Contract Year of the Term (e.g., Contract Years 2 and 3, Contract Years 4 and 5, etc.) are to be used when determining the application of the Maximum GEP Damages Cap and not intended to mean a rolling period of "any" two consecutive Performance Measurement Periods (e.g., Contract Years 2 and 3, Contract Years 3 and 4, etc.).

## Exhibit H

### FORM OF LETTER OF CREDIT

#### **[ISSUING BANK] NON-TRANSFERRABLE, IRREVOCABLE STANDBY LETTER OF CREDIT**

#### **DATE OF ISSUANCE:**

**[Date of issuance]**

**[BENEFICIARY] (“Beneficiary”)**

**[Address]**

**Attention:** **[Contact Person]**

Re: [ISSUING BANK] Non-Transferrable Irrevocable Standby Letter of Credit No. \_\_\_\_\_

Messrs./Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “**you**”) this Non-Transferrable Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the “**Letter of Credit**”) for the account of [--- Party A---] [--- Address ---] and [---Party B---, (--- Address ---)] (“**Account Parties**”), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain [*describe the underlying agreement which requires this LC*].

**1. Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit is [*written dollar amount*] United States Dollars (US\$[*dollar amount*]) (such maximum amount referred to as the “**Stated Amount**”).

**2. Drawings.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at [*bank address*] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 hereof), the original of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “**Draw Certificate**”), duly completed and signed by your authorized officer (signing as such) and (ii) your draft in the form of Attachment B hereto (the “**Draft**”), duly completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile to [ ] with confirmation by telephone at [ ] or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, **Attention:** [ ] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 below). In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us. However, the original of this Letter of Credit must be sent by overnight courier to [ISSUING BANK] at our address set forth above, Attn: [ ], for endorsement along with all amendments, if any on the same day of such facsimile transmission.

**3. Time and Method for Payment.** We hereby agree to honor a drawing hereunder made in compliance with 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 Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, New York time on any Business Day, payment will be made not later than our close

of business on the third succeeding Business Day and if such Draw Certificate is so presented to us after 12:00 noon, New York time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. **Non-Conforming Demands.** 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 a prompt notice following our receipt of the Draw Certificate that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor 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 effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand and re-presented for drawing on or before the date this Letter of Credit expires.

5. **Expiration.** This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of Attachment C hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

6. **Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on [*one year from the issuance date*] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year period(s) from the Initial Expiration Date or any future expiration date, unless at least sixty (60) calendar days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered paragraph 9) that we elect not to consider this Letter of Credit extended for any such additional one year period.

7. **Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of New York, and inter-bank payments can be effected on the Fedwire system.

8. **Governing Law.** This letter of credit is governed by, and construed in accordance with the laws of the state of Texas.

9. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

10. **Irrevocability.** This Letter of Credit is irrevocable.

11. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein.

\* \* \*

*SINCERELY,*  
[ISSUING BANK]

\_\_\_\_\_  
By: \_\_\_\_\_

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

Address:

**ATTACHMENT A**

**FORM OF DRAW CERTIFICATE**

The undersigned hereby certifies to ISSUING BANK (“**Issuer**”), with reference to Non-Transferrable Irrevocable Letter of Credit No. \_\_\_\_\_ (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

- (1) The undersigned is the \_\_\_\_\_ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of \_\_\_\_\_ U.S. dollars (US\$\_\_\_\_\_), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).
- (3) The conditions for a drawing by Beneficiary pursuant to [*describe the draw conditions from the underlying agreement*].
- (4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

- (5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[BENEFICIARY]

By: \_\_\_\_\_

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

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



**ATTACHMENT B**

**DRAWING UNDER NON-TRANSFERRABLE IRREVOCABLE LETTER OF  
CREDIT NO. \_\_\_\_\_**

Date:

PAY TO:      *[BENEFICIARY]*

U.S.\$ \_\_\_\_\_

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO.  
\_\_\_\_\_.

*[BENEFICIARY]*

By: \_\_\_\_\_

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

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

**ATTACHMENT C**

**CANCELLATION CERTIFICATE**

Non-Transferrable Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, being authorized by the undersigned (“**Beneficiary**”), hereby certifies on behalf of Beneficiary to [ISSUING BANK] (“**Issuer**”), with reference to Non-Transferrable Irrevocable Letter of Credit No. \_\_\_\_\_ issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of the Account Parties, under the [*describe the underlying agreement which requires this LC*] have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: \_\_\_\_\_

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

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