

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, PROVIDING FOR, AUTHORIZING, AND APPROVING THE EXECUTION BY THE MAYOR OF A POWER PURCHASE AGREEMENT ("PPA") BETWEEN THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION ("DENTON"), AND BLUEBELL SOLAR II, LLC, A DELAWARE LIMITED LIABILITY COMPANY ("BLUEBELL SOLAR II"); APPROVING AND AUTHORIZING THE ACCEPTANCE AND APPROVAL BY THE CITY MANAGER, OR HIS RESPECTIVE DESIGNEE, OF GUARANTIES AND LETTERS OF CREDIT ISSUED BY BLUEBELL SOLAR II AND NEXTERA ENERGY CAPITAL HOLDINGS, INC., A DELAWARE CORPORATION ("NEXTERA HOLDINGS"), FURTHER SECURING THE OBLIGATIONS OF BLUEBELL SOLAR II TO THE CITY FOR THE BENEFIT OF THE CITY; APPROVING THE EXECUTION OF SUCH OTHER AND FURTHER RELATED DOCUMENTS DEEMED NECESSARY TO EFFECTUATE THIS TRANSACTION BY THE CITY MANAGER, OR HIS DESIGNEE, WHICH ARE INCIDENT OR RELATED TO THE PPA; FINDING THAT THE PPA, AS REDACTED, PERTAINS TO A "COMPETITIVE ELECTRIC MATTER" AS SET FORTH UNDER THE PROVISIONS OF §§551.086 AND 552.133 OF THE TEXAS GOVERNMENT CODE, AS AMENDED; FINDING AND DETERMINING THAT TEXAS GOVERNMENT CODE §252.022(a)(15) APPLIES TO SAID PURCHASE POWER AGREEMENT, EXEMPTING THE PROCUREMENT OF ELECTRICITY FROM THE REQUIREMENTS OF COMPETITIVE BIDDING; FINDING THAT THE PURCHASE OF CAPACITY AND ENERGY MADE BY DENTON UNDER THE TERMS OF THE PPA ARE IN THE PUBLIC WELFARE; AUTHORIZING THE EXPENDITURE OF FUNDS; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, City of Denton ("Denton") is a Texas home-rule municipal corporation governed by the constitution and laws of the State of Texas; and

WHEREAS, Denton's Materials Management department issued a Request for Proposals (RFP 6496) on June 22, 2017 for the submittal of proposals for solar and wind energy in amounts up to 300 MW to be operational by December 31, 2020; and

WHEREAS, a total of 41 entities submitted proposals for 89 different projects for solar and wind energy by the October 4, 2017 deadline; and

WHEREAS, a multi-disciplinary team of Denton employees, supplemented by an outside consultant, evaluated the submitted proposals in accordance with the terms of the Request for Proposals and determined that the Bluebell Solar II, LLC project was the highest rated; and

WHEREAS, a Power Purchase Agreement ("PPA") between Denton and Bluebell Solar II, LLC, a Delaware limited liability company ("Bluebell Solar II") was prepared to document terms of the proposed solar power purchase transaction ("Transaction"); and

WHEREAS, Bluebell Solar II, LLC, ("Bluebell Solar II") is a Delaware limited liability

company and Nextera Energy Capital Holdings, Inc, ("Nextera Holdings"), is a Delaware corporation and both are governed by the constitution and laws of the State of Delaware; and

WHEREAS, on May 7, 2018, the PPA between Denton and Bluebell Solar II was discussed, considered, and deliberated by Denton's Public Utilities Board ("PUB") and the PUB recommended to Denton's City Council, by a vote of ____ (____) in favor and ____ (____) opposed that it approve the PPA; and

WHEREAS, the City Council finds the PPA, including its attached Exhibits A through J, as redacted, should be excepted from public disclosure, as permitted by the provisions of §552.133 of the Texas Government Code, as documents that are reasonably related to a competitive electric matter, the disclosure of which documents would provide an advantage to the competitors or prospective competitors of Denton's municipal electric operation; and

WHEREAS, the City Council finds that the PPA allows Denton to purchase from Bluebell Solar II, 100 MW of solar-generated electricity for a contractual term of twenty (15) years from the Project's Commercial Operation Date; and that the PPA involves Denton's acquisition of reliable, cost-effective replacement solar power and energy from Bluebell Solar II with no detriment to the ratepayers of Denton; and

WHEREAS, the City Council finds that a diversified portfolio of energy resources from multiple sources, including wind power, solar power, natural gas, coal, and landfill gas, is prudent and in the welfare of Denton's electric ratepayers and public; and

WHEREAS, the City Council finds that the PPA will not impair the ability of Denton to comply with the provisions of any of its utility revenue bonds, as amended, which are issued and outstanding; and

WHEREAS, the City Council finds that §252.022(a)(15) of the Texas Government Code is applicable to the PPA and that the competitive bidding law is not applicable to the purchase by Denton of electricity; and

WHEREAS, Denton desires to enter into such other arrangements in support of the PPA with Bluebell Solar II and Nextera Energy Holdings which are incident and related to the PPA, including, but not limited to, guaranties and letters of credit, and to take such additional actions as the City Manager, or his designee, shall determine to be necessary and advisable to consummate and effectuate the PPA; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitations and findings contained in the above Preamble are incorporated herein and are considered to be a part of this Ordinance.

SECTION 2. The City Council, approves and authorizes the Mayor and City Secretary, to execute and attest respectively, the PPA between Denton and Bluebell Solar II under the terms and conditions set forth in Exhibit "A," attendant with Exhibits A through J attached thereto, and

made a part hereof.

SECTION 3. The City Council, as additional security for Bluebell Solar II's performance under the PPA, approves and authorizes the City Manager and the City Secretary, and their respective designees, to approve and accept irrevocable and non-transferable standby Letter(s) of Credit ("Letter(s)") furnished to Denton by Bluebell Solar II and Nxtera Energy Holdings, in accordance with the PPA, with said Letter(s) being drawn upon a commercial bank within the United States, on behalf of Denton, as additional credit protection, under the terms and conditions of, and being substantially in the form as set forth in, the PPA, with such amendments, changes and additions as the City Manager, or his designee, may approve.

SECTION 4. The City Council approves and authorizes the City Manager, or his designee, to take such additional actions as the City Manager, or his designee, determines to be necessary and advisable to continue to effectuate the purpose, terms and conditions of the PPA and further approves and authorizes the City Manager and City Secretary, and their respective designees, to execute and attest respectively, all other documents which are incident and related to these additional actions.

SECTION 5. Immediately following the execution and delivery of the PPA, and the Guaranties and Letter(s) of Credit which are incident to such PPA, the City Secretary is directed to seal and maintain said documents in her custody and control, as documents excepted from public disclosure under the provisions of §552.133 of the Texas Government Code unless otherwise lawfully ordered to disclose said documents.

SECTION 6. This ordinance and a copy of the Power Purchase Agreement, as redacted of Competitive Information, shall be available for public disclosure. The non-redacted Power Purchase Agreement shall not be available for public inspection and copying and will be sealed as provided for in the preceding section.

SECTION 7. The expenditure of funds as provided for in this ordinance is hereby authorized.

SECTION 8. This Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and
seconded by _____, the ordinance was passed and approved by
the following vote [__ - __]:

Mayor Chris Watts: _____

Gerard Hudspeth, District 1: _____

Keely G. Briggs, District 2: _____

Don Duff, District 3: _____

John Ryan, District 4: _____

Dalton Gregory, At Large Place 5: _____

Sara Bagheri, At Large Place 6: _____

PASSED AND APPROVED this the _____ day of _____, 2018.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY:  _____

POWER PURCHASE AGREEMENT

By and Between

CITY OF DENTON, TEXAS

and

BLUEBELL SOLAR II, LLC

dated as of

_____, 2018

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") is made this ____ day of _____, 2018 (the "Effective Date"), by and between BLUEBELL SOLAR II, LLC, a Delaware limited liability company ("Seller") and the CITY OF DENTON, TEXAS, a Texas home-rule municipal corporation, acting operationally through its Denton Municipal Electric Department, with its principal place of business at 215 E. McKinney Street, Denton, Texas 76201 ("Buyer") and. Buyer and Seller are each individually referred to herein as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Seller intends to develop a 100 MW photovoltaic solar energy generation facility on a site located in Sterling County, Texas (the "**Project**"); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase and receive, the Net Output (as defined herein) of the Project, on the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 *Definitions.*

"**AC**" means alternating current.

"**Adjustment Period**" has the meaning set forth in Section 5.3.

"**Affiliate**" means, with respect to any Person, any entity controlled, directly or indirectly, by such Person, any entity that controls, directly or indirectly, such Person or any entity directly or indirectly under common control with such Person. For the purposes of this definition, (a) "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management, operations, or policies of such Person, whether through the ownership of voting securities or by contract or otherwise; and (b) NextEra Operating Partners, LP, NextEra Energy Partners, LP, and their respective subsidiaries, are deemed to be Affiliates of Seller.

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.

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

“Applicable Law” means, with respect to any Person or the Project, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, Governmental Approvals, directives and requirements of all regulatory and other Governmental Authorities, in each case applicable to or binding upon such Person or the Project (as the case may be).

“Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains load interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

“Balancing Authority Area” is the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load resource balance within this area.

“Bankrupt” means, with respect to a Party, such Party (i) 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, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) is generally unable to pay its debts as they fall due, (v) been adjudicated bankruptcy or has filed a petition or an answer seeking an arrangement with creditors, (vi) taken advantage of any insolvency law or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding, (vii) become subject to an order, judgment or decree for relief, entered in an involuntary case, without the application, approval or consent of such Party by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred eighty (180) consecutive Days, (viii) failed to remove an involuntary petition in bankruptcy filed against it within one hundred eighty (180) Days of the filing thereof, or (ix) become subject to an order for relief under the provisions of the United States Bankruptcy Act, 11 U.S.C. § 301.

“Business Day” means any day except a Saturday, Sunday or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. Central Prevailing Time and close at 5:00 p.m. Central Prevailing Time. Notwithstanding the foregoing, for scheduling purposes only, the term “Business Day” shall have the meaning given to that term from time to time by NERC on its website (<http://www.nerc.com/~oc/offpeaks.html>).

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

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“Buyer Curtailment” means any curtailment of delivery of Net Output for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure 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 Project submitted by the QSE or the exercise of other rights with respect to the Project by the QSE.

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce generation from the Project by a specific amount of 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 Project pursuant to a Buyer Curtailment Order. The Buyer Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up.

“Buyer Excuses” has the meaning set forth in Section 3.5(b).

“Buyer’s Replacement Costs” has the meaning set forth in Section 3.7(a).

“Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project intended to value any aspect of the capacity of the Project to produce Energy or ancillary services.

“Capacity Trade” means a transaction that transfers financial responsibility for capacity between QSE’s, as set forth in the ERCOT Protocols.

“Change in Law” means any change in or addition to any Applicable Law or ERCOT Protocols adopted on or after the date of this Agreement.

“COD Conditions” means all of the requirements that must be satisfied by Seller as a prerequisite to achieving the Commercial Operation Date as set forth in Section 4.4.

“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 Operating 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

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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.

"Commercial Operation" means that no less than the Project Capacity is operating and able to produce and deliver Delivered Energy to Buyer pursuant to the terms of this Agreement.

"Commercial Operation Date" means the date on which (a) Commercial Operation has occurred; (b) Seller shall have delivered to Buyer the Delivery Term Security required under Section 9.4(a)(ii); (c) Seller has received all local, state and federal Governmental Approvals and other approvals as may be required by Applicable Law for the construction, operation and maintenance of the Project.

"Confidential Information" has the meaning set forth in Section 13.1.

"Contract Price" has the meaning set forth in Section 3.3.

"Contract Quantity" has the meaning set forth in Section 3.21(a).

"Contract Year" means a calendar year commencing on January 1 of the year following the Commercial Operation Date of the Project.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with such Terminated Transaction.

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

"Cure Payment Period" has the meaning set forth in Section 3.21(f).

"Cured Performance Measurement Period" has the meaning set forth in Section 3.21(d).

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“Daily Delay Damages”

“Day Ahead Market” means the ERCOT Day Ahead Market or “DAM”.

“Damage Payment” means an amount equal to the amount to be posted as Project Development Security pursuant to Section 9.4(a)(i).

“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 Availability” Notice has the meaning set forth in Section 3.18(d).

“Deemed Delivered Energy” means the amount of Energy (in MWh) that the Project 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 Project availability, weather and other pertinent data for the period of time during the Buyer Curtailment Period.

“Defaulting Party” has the meaning set forth in Section 7.1(a).

“Delivered Energy” means all of the Project’s Net Output delivered to Buyer at the Delivery Point.

“Delivery Point” means the 345kV point of interconnection between the Seller’s Interconnection Facilities and the Transmission Operator’s System at Divide Substation, as specified in the Interconnection Agreement and as further identified in Exhibit C.

“Delivery Term” means the period of time commencing upon the Commercial Operation Date and terminating at the end of the fifteenth (15th) Contract Year.

“Delivery Term Security” has the meaning set forth in Section 9.4(a)(ii).

“Disclosing Party” has the meaning set forth in Section 13.1.

“Dispute” has the meaning set forth in Section 17.1.

“Downgrade Event”

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“Early Termination Date” has the meaning set forth in Section 7.2(a).

“Effective Date” has the meaning set forth in the Preamble to the Agreement.

“Emergency” means that an “Emergency Condition” has been declared as provided in the ERCOT Protocols.

“Energy” means electric energy generated by the Project and available for delivery to the Delivery Point, which shall exclude the electric energy consumed by the Project and shall be in the form of three (3)-phase, sixty (60) Hertz, alternating current.

“Energy Trades” has the meaning set forth in ERCOT Protocol 4.4.2.

“Environmental Attributes” means any and all presently existing or future benefits, emissions reductions, environmental air quality credits, emissions reduction credits, greenhouse gas emissions, renewable energy credits (as contemplated on the Effective Date pursuant to PUCT Substantive Rule 25.173(c)(13)), including those granted sanctioned or issued by federal, state or local authorities, “green-e” certificates, offsets and allowances, green tag or other transferable indicia attributable to the Project during the Term, howsoever entitled or named, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including any of the same arising out of presently existing or future legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (“UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency, or any successor state or federal agency given jurisdiction over a program involving transferability of Environmental Attributes, and any renewable energy certificate reporting rights to such Environmental Attributes. Notwithstanding any other provision hereof, Environmental Attributes do not include: (a) any Tax Attributes, (b) state, federal or private grants or other benefits related to the Project, (c) Net Output.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization or other laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

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

“ERCOT Protocols” means the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and settlement policies, rules,

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guidelines, procedures, standards and criteria of ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedures described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

“Event of Default” has the meaning set forth in Section 7.1.

“Executives” has the meaning set forth in Section 17.2(a).

“Fitch” means Fitch Ratings, Ltd or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

“Forced Outage” means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Project in an amount greater than ten percent (10%) of the Project 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 Project for maintenance or repair that is not a Planned Outage, due to a System Curtailment, or the result of a Force Majeure Event.

“Force Majeure Event” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, other than the obligation to pay amounts due, but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby 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 due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as a Force Majeure Event include, but are not limited to the following:

(i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

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(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or

(iii) except as set forth in subpart (b)(vi) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).

(iv) environmental and other contamination at or affecting the Project;

(v) explosion, accident or epidemic;

(vi) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to or adjuncts of shipping or navigation, or quarantine;

(vii) nuclear emergency, radioactive contamination or ionizing radiation or the release of any hazardous waste or materials;

(viii) air crash, shipwreck, train wrecks or other failures or delays of transportation;

(ix) vandalism beyond that which could be reasonably prevented by Seller;

(x) the discovery of Native American burial grounds not evidenced in Seller's Phase I environmental assessment of the Site;

(xi) the discovery of endangered species, as defined by Law; and

(xii) breakdown or failure of equipment as a result of a serial manufacturer defect or flaw.

(b) A Force Majeure Event shall not be based on:

(i) Buyer's inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain Governmental Approvals or other approvals of any type for the construction, operation, or maintenance of the Project;

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(iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by a Force Majeure Event of the specific type described in any of subsections (a)(i) through (a)(xi) above;

(v) Seller's failure to obtain financing or other funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement; or

(vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller or Seller's Affiliates.

"Force Majeure Extension" has the meaning set forth in Section 4.2(b)(iii).

"Gains"



"GEP Cure" has the meaning set forth in Section 3.21(b).

"GEP Damages" has the meaning set forth in Exhibit D.

"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 Approvals" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Project.

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“Governmental Authority” means any federal, state, local or municipal government body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; any court or governmental tribunal; or any independent operator, regional transmission organization or other regulatory body; in each case having jurisdiction over either Party, the Project, the Site, Seller’s Interconnection Facilities, the Interconnection Provider’s Interconnection Facilities, or the Transmission Operator’s System.

“Governmental Charges” has the meaning set forth in Section 12.2.

“Guaranteed Commercial Operation Date” means December 31, 2020.

“Guaranteed Energy Production” has the meaning set forth in Section 3.21(a).

“Guarantor”



“Guaranty” means a Guaranty substantially in the form of Exhibit E.

“Initial Negotiation End Date” has the meaning set forth in Section 17.2(a).

“Interconnection Agreement” means the separate generation interconnection agreement between Seller (or its Affiliate), the Transmission Operator and the Interconnection Provider for interconnection of the Project to the Transmission Operator’s System as such agreement may be amended from time to time.

“Interconnection Provider” means the Person that owns the portion of the Transmission Operator’s System (including the interconnection facilities that are not Seller’s Interconnection Facilities) at the Delivery Point. As of the Effective Date, the Interconnection Provider is LCRA.

“Interconnection Provider’s Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Project with the Transmission Operator’s System from, and on Buyer’s side of, the Delivery Point.

“Interest Payment Date” means the last Business Day of each calendar month.


“Interest Rate” means the lower of (i) annual rate equal to the Prime Rate then in effect



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"LCRA" means Lower Colorado River Authority.

"Letter of Credit"



"Losses"



"Manager" has the meaning set forth in Section 17.2(a).

"Metering System" means all meters, metering devices and related instruments used to measure and record Energy and to determine the amount of such Energy that is being made available or delivered by the Project and the Wind Project at the Delivery Point.

"Moody's" means Moody's Investor Service, Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

"MW" means a megawatt (or 1,000 kilowatts) of AC electric generating capacity.

"MWh" means a megawatt hour of Energy.

"Net Output" means Energy produced by the Project, less station use and less transformation and transmission losses and other adjustments (e.g., Seller's load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output shall be the amount of Energy measured by the meters installed at the Delivery Point.

"Non-Defaulting Party" has the meaning set forth in Section 7.2.

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"Notice" has the meaning set forth in Section 18.1.

"Operating Procedures" has the meaning set forth in Section 3.13.

"Party" or **"Parties"** has the meaning set forth in the first paragraph of this Agreement.

"Performance Assurance" means collateral provided by Seller to Buyer to secure Seller's obligations hereunder and includes Project Development Security and Delivery Term Security.

"Performance Measurement Period" has the meaning set forth in Section 3.21(a).

"Permitted Extensions" means extensions to the Guaranteed Commercial Operation Date due to Transmission Delay, Permitting Delay, or Force Majeure Extension.

"Permitting Delay" has the meaning set forth in Section 4.2(b)(ii).

"Person" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental entity, limited liability company or any other entity of whatever nature.

"Planned Outage" means the removal of the all or a portion of the Project 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 Planned Outage, and in Seller's sole discretion must be of the type that is necessary to reliably maintain consistent with Prudent Operating Practices the Project, (b) cannot be reasonably conducted during the Project's operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Project Capacity.

"Prime Rate"



"Product" has the meaning set forth in Section 3.1.

"Project" has the meaning set forth in the Recitals and includes Seller's proposed electrical plant and equipment used to generate electricity utilizing photovoltaic solar

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power located at the Site, Seller's Interconnection Facilities and any and all additions, replacements or modifications. The Project is more particularly described in Exhibit B.

"Project Capacity" means the full generation capacity of the Project net of all Station Service as measured at the Delivery Point, which will be 100 MW.

"Project Cure Period" has the meaning set forth in Section 4.3(a).

"Project Development Security" has the meaning set forth in Section 9.4(a)(i).

"Project Investor" or ***"Project Investors"*** means any and all Persons or successors in interest thereof (A) lending money, extending credit or providing loan guarantees (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; or (B) participating (directly or indirectly) as an equity investor (including a Tax Equity Investor) in the Project; or (C) any lessor under a lease finance arrangement relating to the Project.

"Prudent Operating Practices" means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric generation industry for solar facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and standards of economy and expedition. Prudent Operating Practices is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the industry.

"Qualified Scheduling Entity" or ***"QSE"*** has the meaning set forth in the ERCOT Protocols and means the entity that provides the Project scheduling, bidding services and financial settlement with ERCOT.

"Ratings Agency" means either S&P, Moody's, or Fitch.

"Receiving Party" has the meaning set forth in Section 13.1.


"Referral Date" has the meaning set forth in Section 17.2(a).

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“Replacement Price” means the price at which Buyer, acting in a Commercially



“RTSPP” or ***“Real-Time Settlement Price Point”*** means, for fifteen (15) minute settlement period, the real-time settlement price (as then-applicable to the Delivery Point) for Net Output, expressed in dollars per MWh, at the Delivery Point for such settlement period, as determined by ERCOT and published on the ERCOT website at www.ercot.com in accordance with the then applicable ERCOT Protocols. The ERCOT Day Ahead Market and RTSPP location/name for the Project settlement point is



“S&P” means Standard & Poor’s or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

“SCADA” means Supervisory Control and Data Acquisition.

“SEC” means the U.S. Securities and Exchange Commission.

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

“Seller Curtailment” means any curtailment of Net Output resulting from (a) a failure of Seller’s Interconnection Facilities that causes the Project to be disconnected, suspended or interrupted, in whole or in part, or (b) Seller’s default under this Agreement or the Interconnection Agreement.

“Seller Excuses” has the meaning set forth in Section 3.5(a).

“Seller’s Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Project with the Transmission Operator’s System up to, and on Seller’s side of, the Delivery Point.

“Seller’s Replacement Costs” has the meaning set forth in Section 3.6(a).

“Seller’s Ultimate Parent Company” means NextEra Energy, Inc.

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"Settlement Amount" means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction.

"Shared Contract Year" has the meaning set forth in Section 3.21(d).

"Site" means the real property on which the Project is located.

"Station Service" means the electric energy produced by the Project that is used within the Project to power the lights, motors, control systems and other auxiliary electrical loads that are necessary for operation of the Project.

"System Curtailment" means any curtailment of delivery of Net Output as the result of any of the following: (i) an Emergency, (ii) an action taken by the Interconnection Provider or the Transmission Operator to decrease the production of the Project's Net Output to resolve transmission constraints, and (iii) any other order or directive of the Interconnection Provider or the Transmission Operator, which order or directive may be directly communicated to Seller by the Interconnection Provider or the Transmission Operator, or indirectly to Seller by Buyer.

"System Curtailment Order" means the instruction from ERCOT or the Transmission Operator to a Party or the QSE to reduce generation from the Project by the amount, and for the period of time set forth in such order, due to a System Curtailment.

"Tax Attributes" means (i) investment tax credits (including any grants or payments in lieu thereof) and any other tax deductions or benefits under federal, state or other Law available as a result of the ownership and operation of the Project or the output generated by the Project (including, without limitation, tax credits, payments in lieu thereof and accelerated and/or bonus depreciation); and (ii) present or future (whether known or unknown) cash payments, or outright grants of money relating in any way to the Project.

"Tax Equity Investor" means an investor that has acquired an equity interest in Seller pursuant to a financing structure that assigns such investor rights, title and benefits to the Tax Attributes of Seller.

"Term" has the meaning set forth in Section 2.1.

"Terminated Transaction" means the termination of this Agreement in accordance with Section 7.2 of this Agreement.

"Termination Payment" has the meaning set forth in Section 7.3.

"Transfer Taxes" has the meaning set forth in Section 3.3(b).

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“Transmission Delay” has the meaning set forth in Section 4.2(b)(i).

“Transmission Operator” means ERCOT or any successor independent system operator, regional transmission operator or other transmission operator from time to time having authority to control the transmission Balancing Authority into which the Project is interconnected.

“Transmission Operator’s System” means the contiguously interconnected electric transmission facilities over which the Transmission Operator has rights to manage the bulk transmission of capacity and energy from the Delivery Point.

“TRE” means the Texas Reliability Entity, Inc., and its successor.

“Wind Project” has the meaning set forth in Section 5.1.

1.2 Interpretation.

The following rules of construction shall be followed when interpreting this Agreement:

- (a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine, and neuter;
- (b) words used or defined in the singular include the plural and vice versa;
- (c) references to Articles and Sections refer to Articles and Sections of this Agreement;
- (d) references to Annexes, Exhibits and Schedules refer to the Annexes, Exhibits and Schedules attached to this Agreement, each of which is made a part hereof for all purposes;
- (e) references to Applicable Laws refer to such Applicable Laws as they may be amended from time to time, and references to particular provisions of an Applicable Law include any corresponding provisions of any succeeding Applicable Law and any rules and regulations promulgated thereunder;
- (f) terms defined in this Agreement are used throughout this Agreement and in any Annexes, Exhibits and Schedules hereto as so defined;
- (g) references to money refer to legal currency of the United States of America;
- (h) the words “includes” or “including” shall mean “including without

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limitation;"

(i) the words "hereof," "hereby," "herein," "hereunder" and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular Article or Section in which such words appear, unless otherwise specified;

(j) all references to a particular entity shall include a reference to such entity's successors and permitted assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;

(k) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;

(l) the word "or" will have the inclusive meaning represented by the phrase "and/or", unless the context clearly indicates that an exclusive meaning is intended.

(m) the words "shall" and "will" mean "must", and shall and will have equal force and effect and express an obligation; and

(n) the words "writing," "written" and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

ARTICLE 2 TERM

2.1 Term.

The "**Term**" of this Agreement shall commence on the Effective Date and continue until the date that is fifteen (15) years following the Commercial Operation Date, unless sooner terminated in accordance with the terms hereof. The Term may be renewed or extended by mutual consent of the Parties, upon terms and conditions and for a price upon which the Parties mutually agree in connection with such extension or renewal.

ARTICLE 3 OBLIGATIONS AND DELIVERIES

3.1 Product.

The "**Product**" to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is Delivered Energy, Capacity Attributes, Environmental Attributes (consistent with the requirements described in PUCT Substantive Rule §25.173(e)), and other ancillary

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products, services or attributes similar to the foregoing which are or can be produced by or associated with the Delivered Energy in accordance with the terms hereof.

3.2 Purchase and Sale.

Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller for the Product in accordance with the terms hereof.

3.3 Contract Price.

(a) Buyer shall pay Seller for each MWh of the Product during the Delivery Term, at the applicable rate set forth in Exhibit A (as applicable during the respective periods, the “**Contract Price**”).

(b) In addition to the amounts otherwise payable by Buyer in accordance with this Section 3.3, Buyer shall pay and shall indemnify, to the extent allowable by Applicable Law, and hold Seller harmless from and against all sales, use excise, ad valorem, transfer and other similar taxes (“**Transfer Taxes**”), but excluding in all events taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of Product (regardless of whether such Transfer Taxes are imposed on Buyer or Seller), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes.

3.4 Capacity Attributes.



3.5 Performance Excuses.

(a) The performance of Seller to deliver the Energy shall be excused only (i) during periods of Force Majeure, (ii) by Buyer’s failure to perform, (iii) during Buyer Curtailments and System Curtailments, and (iv) during Planned Outages (“**Seller**

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Excuses”).

(b) The performance of Buyer to receive and pay for the Product shall be excused only (i) during periods of Force Majeure, (ii) by Seller’s failure to perform, or (iii) during System Curtailments (“**Buyer Excuses**”).

3.6 *Buyer’s Failure to Accept Delivery of Product.*

(a) If Buyer fails to take all or part of the Product and such failure is not excused due to Buyer Excuses, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount equal to the Contract Price multiplied by the amount of Product that Buyer failed to take during such month; provided, however, in no event shall Buyer be required to pay Seller an amount greater than the Contract Price (“**Seller’s Replacement Costs**”).

(b) Seller shall include in a monthly invoice delivered to Buyer pursuant to Section 8.1 the amounts owed by Buyer pursuant to Section 3.6(a) and a description, in reasonable detail, of the calculation of Seller’s Replacement Costs.

3.7 *Seller’s Failure to Deliver Product.*

(a) If Seller fails to deliver all or part of the Product pursuant to the Agreement, and such failure is not due to Seller Excuses, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price (“**Buyer’s Replacement Costs**”).

(b) No later than the tenth (10th) Day of the month following any month in which Seller owes Buyer’s Replacement Costs, Buyer shall deliver to Seller an invoice showing the amounts owed by Seller and a description, in reasonable detail, of the calculation of Buyer’s Replacement Costs. Seller shall credit Buyer, in an amount equal to any undisputed amounts set forth in the invoice received from Buyer, against the amounts owed by Buyer to Seller, provided that if the amount of such credit is greater than the amount payable by Buyer for such month, the excess portion of such credit shall be applied by Seller to reduce the amount payable by Buyer hereunder in subsequent month(s).

3.8 *Offsets, Allowances and Environmental Attributes.*

(a) Buyer is entitled to all Environmental Attributes and Capacity Attributes resulting from the generation of all or part of the Product that is actually purchased by Buyer pursuant to this Agreement. Buyer shall be entitled to any Environmental Attributes or Capacity Attributes resulting from all or part of the Product

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that Buyer, for any reason, did not accept pursuant to Section 3.6.

(b) Seller shall be entitled to all (i) federal and state production tax credits, investment tax credits and any other tax credits which are or will be generated by the Project, (ii) any cash payments, grants under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 or outright grants of money relating in any way to the Project or Environmental Attributes, and (iii) any Environmental Attributes that the Buyer is not entitled to pursuant to the provisions of Section 3.8(a). Buyer acknowledges that Seller has the right to sell any Environmental Attributes to which it is entitled pursuant to this Section 3.8(b) to any Person other than Buyer at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Buyer hereunder. Buyer shall have no claim, right or interest in such Environmental Attributes or in any amount that Seller realized from the sale of such Environmental Attributes.

(c) During the Term, or applicable portion thereof, Seller shall deliver and transfer, and Buyer shall receive, Environmental Attributes and Capacity Attributes described in Sections 3.1 and 3.4, respectively. Seller shall transfer all Environmental Attributes in accordance with the ERCOT protocols, including its regulations and procedures, for recording transfers. Seller and Buyer shall each cooperate fully and assist each other in complying with any and all regulatory obligations relating to recording and tracking of the transfer. Seller and Buyer shall cooperate in good faith and undertake reasonable efforts to consummate recognition of the transfer in the applicable ERCOT Tracking System; provided, however, that Buyer acknowledges that such transfer will not be recognized unless and until Buyer confirms such transfer in accordance with the applicable requirements of the ERCOT Tracking System. Upon a notification by the administrator or operator of the ERCOT Tracking System that the transfer of the Environmental Attributes cannot be recorded due to a deficiency in the transaction or documentation, the Parties shall promptly confer and cooperate in taking all reasonable actions necessary to cure any defects in the proposed transfer, so that the transfer can be recorded at the earliest possible date.

3.9 Station Service.

If Buyer or any of its Affiliates provides retail electric service in the service territory in which the Project is located, then if requested by Seller, Buyer or such Affiliate shall provide Station Service to the Project (including Seller's Interconnection Facilities) as requested by Seller during construction and operation of the Project at the rates and on the terms set forth in the applicable tariff(s) on a non-discriminatory basis with other commercial customers.

3.10 Transmission.

(a) Seller shall be responsible for presenting to and receiving Transmission Operator approval of the Project interconnection requirements and transmission facilities

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so that Seller can perform its Energy deliveries hereunder in accordance with such Transmission Operator's requirements.

(b) In the event that the Transmission Operator or any other properly authorized Person exercising control over the Interconnection Provider's Interconnection Facilities or the Transmission Operator's System takes any action or orders Seller or Buyer to take any action that affects Buyer's ability to take delivery of Energy hereunder, Buyer shall use its best efforts (at its own cost and expense) to mitigate the adverse effects of such action(s) on Buyer's ability to perform its obligations hereunder, including, without limitation, redispatching its generation resources, other than the Project.

3.11 Scheduling.

(a) The Parties shall comply with all ERCOT Protocols, associated operation standards and guidelines, and Operating Procedures.

(b) Promptly following the Effective Date, Buyer and Seller shall take all actions, and execute and deliver all documents necessary, to authorize or designate Seller, or Seller's designated QSE, as the Project's Qualified Scheduling Entity. Seller shall cause its designated QSE to provide, and Buyer shall accept, at no cost to Buyer, Seller's Qualified Scheduling Entity services for the Project. The Seller's QSE shall be responsible for scheduling the Project Capacity and Product and settling with ERCOT regarding the Net Output. Seller shall be responsible for and cause the Seller's QSE to perform the Qualified Scheduling Entity services in accordance with ERCOT Protocols, this Agreement and Applicable Law.

(c) The Seller's QSE will be obligated by the ERCOT Protocols to communicate orders, instructions, or other directives to Seller and Buyer's QSE, including such that may result in the inability or diminished ability to generate Net Output. The Seller's QSE shall submit energy schedules, resource plans, and energy offer curves in accordance with the requirements of ERCOT Protocols, this Agreement and Applicable Law.

(d) Seller's QSE will transfer Product and/or applicable components thereof to Buyer's QSE utilizing Energy Trades as defined in ERCOT Protocol 4.4.2 or its successor. The fifteen (15)-minute interval trade volumes will be based on ERCOT's revenue meter settlement data for the relevant flow date. The Energy Trades will be submitted prior to ERCOT's energy trade deadline on the day following the flow date as mutually agreed upon with the Buyer in the Operating Procedures.

(e) Seller's QSE will transfer Product and/or applicable components thereof to Buyer's QSE utilizing Capacity Trades as defined in ERCOT Protocol 4.4.1 or its successor. The hourly trade volumes will be based on ERCOT's most recent forecast

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of the projects MW output, and extended at least through Hour Ending 24 of the following day. The Capacity Trades will be executed on an hourly basis, or as mutually agreed upon with the Buyer.

(f) The Seller shall, or cause the Seller's QSE, as applicable, to transmit to Buyer, the following information that shall be further defined in the Operating Procedures and mutually agreed upon by the Parties:

(i) timely transmit relevant non-ICCP settlement data and notices to ERCOT from the Project;

(ii) settlement and billing data that has been reviewed and trued up with ERCOT settlement data;

(iii) forward payments received from ERCOT for the benefit of Buyer that are not due to Seller pursuant to this Agreement, including any generator revenue benefits such as the Operating Reserve Demand Curve "ORDC" and/or Congestion Revenue Rights Auction Revenue Distributions (CARD);

(iv) provide notice of all resource outages, required outage scheduling information, authorizations and corresponding updates to Buyer;

(v) all required meter data, telemetry, and settlement data, via ICCP SCADA data, to Buyer's designee and ERCOT, according to ERCOT Protocols, associated operating guides, and the Operating Procedures;

(vi) provide all information requested by Buyer or Buyer's designee so that Buyer may review scheduling and billing/settlement activities of Seller as they apply to Buyer obligations under this Agreement;

(vii) install, or cause to be installed, all control and communication equipment to enable the automatic control of the output of the Project by the QSE;

(viii) provide to Buyer next hour and next day output forecasts, at least by 0600 hours CPT 24 hours in advance for the next day and for up to seven days; and

(ix) shall install and telemeter to ERCOT the site-specific meteorological information that ERCOT requires in accordance with ERCOT Protocols.

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3.12 Sales for Resale.

All Product delivered to Buyer hereunder shall be sales for resale, with Buyer reselling such Product for use in satisfying its native load requirements or that of other ERCOT market participants. Buyer shall provide Seller with documentation reasonably requested by Seller for regulatory or tax purposes to evidence that the deliveries of Product hereunder are sales for resale.

3.13 Operating Procedures.

Seller and Buyer shall use Commercially Reasonable Efforts to develop written operating procedures for the Project ("**Operating Procedures**") consistent with the criteria set forth in Exhibit J. These Operating Procedures shall be in place no later than twelve (12) months prior to the Commercial Operation Date. Such Operating Procedures shall be in accordance with ERCOT Protocols, associated operating guides and Prudent Operating Practices under which the Parties will perform their respective obligations under this Agreement. Upon written mutual agreement, Seller and Buyer may update the Operating Procedures without amendment to this Agreement. Any disputes with respect to the Operating Procedures shall be resolved in accordance with the terms set forth in ARTICLE 17.

3.14 Standards of Care.

(a) Seller shall comply with all applicable requirements of Applicable Law, ERCOT, TRE and NERC relating to the Project (including those related to construction, ownership and/or operation of the Project).

(b) Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable operating policies, criteria, rules, guidelines, tariffs and protocols of ERCOT and Prudent Operating Practices.

(c) Seller agrees to abide by all (i) NERC, TRE and ERCOT reliability requirements, including all such reliability requirements for generator owners and generator operators, and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Operator.

3.15 Curtailment.

(a) Except as set forth in this Section 3.15, Seller shall not curtail or interrupt deliveries of Net Output from the Project as required by this Agreement for economic reasons of any type whatsoever; provided Seller's obligation to generate, deliver and sell to Buyer the Net Output shall be excused during Seller Excuse Hours. Buyer shall have no obligation to purchase the Net Output to the extent of a Seller Curtailment.

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(b) Seller shall reduce generation from the Project 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 Net Output delivered by Seller to Buyer at the Delivery Point to the level stated by Buyer. Except for a Buyer Curtailment, in no event will Buyer curtail or interrupt deliveries of Net Output from the Project as required by this Agreement for economic reasons of any type whatsoever. During any such period where Buyer fails to take the Net Output, Buyer shall have the right to make available, for sale, for resale or any other purpose, any rights and commercial benefits associated with Product, including Environmental Attributes, Capacity Attributes, and ancillary services, to the extent permitted under Applicable Law or ERCOT Protocols.

(c) Seller shall at all times during the Term comply with the directives of the Transmission Operator and the Interconnection Provider 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 agent) as the market participant registered by Transmission Operator for the Project. In all cases involving a System Curtailment, Seller shall reduce the Net Output delivered by Seller to Buyer and any co-offtaker, if applicable, at the Delivery Point on a non-discriminatory, pro-rata basis to the level stated by the Transmission Operator, the Interconnection Provider or Buyer, as applicable. Buyer shall have no obligation to purchase the Net Output to the extent of a System Curtailment.

(d) If Seller fails to comply with the curtailment directives and instructions set forth in Section 3.15(c) and Section 3.15(d), Seller shall be liable to Buyer for any penalties or fines imposed on Buyer by any Governmental Authority and any actual direct damages suffered by Buyer as a result of Seller's failure to comply, reduced by any amount Buyer is able to realize for the sale of any Net Output delivered in violation of the Buyer Curtailment Order or the System Curtailment Order, as applicable. Notwithstanding the foregoing, Seller's failure to comply with a Buyer Curtailment Order or System Curtailment Order shall not be a Seller Event of Default; provided, Seller's failure to reimburse Buyer for any such fines or penalties actually incurred by Buyer as a result of Seller's failure to comply shall be considered a default under this Agreement governed by Section 7.1(a)(i).

(e) Upon Buyer's reasonable request, Seller shall promptly provide to Buyer, or permit Buyer to audit and examine during normal business hours, any additional and supporting documentation, including the Project's operating data and

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SCADA data necessary for Buyer to audit and verify any matters set forth in Section 3.15.

3.16 *Outage Notification.*

(a) Seller shall schedule Planned Outages for the Project in accordance with Prudent Operating Practices and with the prior written consent of Buyer, which consent may not be unreasonably withheld, conditioned or delayed. The Parties acknowledge that in all circumstances, Prudent Operating Practices shall dictate when Planned Outages should occur. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than October 1st of the year prior to each year of the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld, conditioned or delayed. Buyer shall promptly respond with its approval or with reasonable modifications to the Planned Outage schedule and Seller shall use its best efforts in accordance with Prudent Operating Practices to accommodate Buyer's requested modifications. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Prudent Operating Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld, conditioned or delayed. Seller shall use its best efforts in accordance with Prudent Operating Practices not to schedule Planned Outages during the months of June, July, August, and September. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage.

(b) In addition to Planned Outages, Seller shall use Commercially Reasonable Efforts to promptly notify Buyer of any Forced Outage lasting for more than sixty (60) consecutive minutes. Such Notices shall contain information describing the nature of the Forced Outage, the beginning date and time of such Forced Outage, the expected end date and time of such Forced Outage, the amount of Energy that Seller expects will be provided during such Forced Outage, and any other information reasonably requested by Buyer. With respect to any such Forced Outage, Seller shall provide Buyer with such Notice by any reasonable means requested by Buyer, including by telephone or electronic mail.

3.17 *Operations Logs and Access Rights.*

(a) Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, fuel consumption, efficiency, availability, maintenance performed, Planned Outages, Forced Outages, System Curtailment Orders, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments

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of equipment and protective devices. Seller shall maintain this information in accordance with Applicable Law, ERCOT Protocols, and Prudent Operating Practices, as applicable. In case of conflict, Applicable Law shall prevail. Upon request by Buyer, Seller shall provide material operations and maintenance information electronically to Buyer within five (5) days of Buyer's request.

(b) Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business hours upon reasonable advance Notice and for any purposes reasonably connected with this Agreement; *provided*, that Buyer shall observe all applicable Project safety rules that Seller has communicated to Buyer; provided further, that Buyer shall indemnify Seller for the actions of its authorized agents, employees, contractors, inspectors and other representatives for harm or liabilities caused by Buyer, such authorized individuals or such activities while such authorized individuals are at the Site or the Project.

3.18 Availability Forecasting.

(a) Seller shall provide Buyer with forecasts of the delivery of Energy under this Agreement as described below and as provided in the Operating Procedures. Such availability forecasts shall include the updated status of all Project equipment that may impact availability. Seller shall use Commercially Reasonable Efforts to forecast the delivery of Energy under this Agreement accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to accommodate changes to operating and scheduling procedures of Buyer.

(b) No later than: (i) the earlier of September 1 preceding the first Contract Year or forty-five (45) Days prior to the commencement of the first Contract Year; and (ii) September 1 of each calendar year for every subsequent Contract Year, Seller shall provide to Buyer a non-binding forecast of the hourly delivery of Energy under this Agreement for an average day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(c) Ten (10) Business Days before the commencement of the first Contract Year, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Energy deliveries under this Agreement for each day of the following month in a form reasonably acceptable to Buyer.

(d) On a daily basis, commencing the day before the Commercial Operation Date, a day-ahead estimate of available Project Capacity (the "**Day-Ahead Availability Notice**") for each day. Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's forecast of Delivered Energy for such day. If Seller fails to provide Buyer with a Day-Ahead Availability Notice, then (i) until Seller provides a

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Day-Ahead Availability Notice, Buyer may rely on the most recent day-ahead forecast submitted by Seller to Buyer.

3.19 Weather Station.

(a) No later than sixty (60) Days prior to the Commercial Operation Date, Seller, at its own expense, shall install and maintain at least one stand-alone meteorological station at the Site to monitor and report the meteorological data required under Section 3.19(b). Seller shall maintain the meteorological station as necessary to provide Project data.

(b) Upon Commercial Operation, and continuing through the end of the Delivery Term, Seller shall record and maintain the following data:

- (i) real power production by the Project for each hour;
 - (ii) changes in operating status and maintenance events;
 - (iii) any unusual conditions found during inspections;
 - (iv) any significant events related to the operation of the Project;
- and
- (v) one (1) minute and hourly time-averaged measurements from data samples at ten (10) seconds or greater frequency for the following parameters at the Project: total global horizontal irradiance, total global radiation within the plane of the array, air temperature, relative humidity, precipitation, barometric pressure, back of module surface temperature and other pertinent meteorological conditions.

(c) Buyer shall have real-time access to the required meteorological data as prescribed in the Operating Procedures. Seller shall provide Buyer a report within thirty (30) days after the end of each month that provides the foregoing information for such month as well as any other additional information that Buyer reasonably requests regarding the operation of the Project that is collected and maintained by Seller in the ordinary course of Project operations.

(d) Seller shall make available to Buyer all data from any weather monitoring portals Seller elects to install at the Site.

3.20 Change in Law.

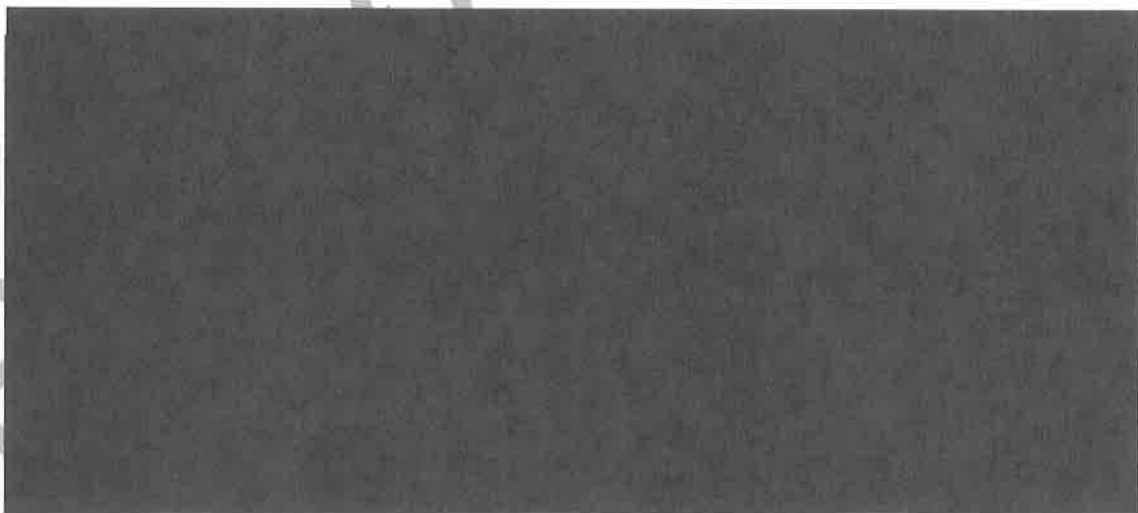
If during the Term of this Agreement there occurs any material change (including promulgation, enactment, repeal and amendment) in the application of Applicable Law

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including, without limitation, a federal renewable portfolio standard and any material change by any state Governmental Authority regarding a Party's authority to sell or purchase Environmental Attributes and such government action either (a) renders this Agreement illegal or unenforceable, (b) would render performance by a Party illegal or unenforceable; or (c) eliminates, abolishes or makes illegal the trading or transferring of Environmental Attributes; or there are changes to the definitions, mechanisms and processes for the sale and delivery of Environmental Attributes under the Texas Renewable Portfolio Standard (or any successor or replacement product) (a "**Program Change**"), or PUCT Substantive Rule §25.173, then promptly after any such government action or Program Change and Notice by the affected Party to the other Party, the Parties shall enter into good faith negotiations to make the minimum changes to this Agreement necessary to render this Agreement in compliance with any such government action or Program Change and shall take such other actions in compliance with the terms and conditions of such government action or Program Change while preserving to the maximum extent possible the benefits, burdens and obligations of each Party under this Agreement; provided, however, that if any such government action or Program Change would require any modification to the Project, and only if Seller and Buyer agree to amend the Agreement in order to meet the requirements of such government action or Program Change, Seller shall implement such modifications to its sole satisfaction. The costs for such agreed upon modifications will be the responsibility of Seller.

The following shall not be considered a Change in Law or be subject to this Section 3.20: (i) any change in Applicable Law with respect to Tax Attributes which are or will be generated by the Project; (ii) any outright grants of money relating in any way to the Project or Environmental Attribute; and (iii) any Environmental Attributes that the Buyer is not entitled to pursuant to the provisions of Section 3.8(a).

3.21 Contract Quantity and Guaranteed Energy Production.



(b) If Seller has a GEP Failure, then within forty-five (45) days after the

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last day of the last month of such Performance Measurement Period, Seller shall promptly notify Buyer of such failure. Seller may cure the GEP Failure by providing to Buyer an amount of Delivered Energy as set forth in the formula below ("**GEP Cure**").

[REDACTED]

(c) If Seller fails to qualify for the GEP Cure for a given Performance Measurement Period, Seller shall pay, to Buyer, GEP Damages calculated pursuant to Exhibit D.

[REDACTED]

(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) After the GEP Cure period expires, and if Seller has not achieved the GEP Cure, 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 (the "**Cure Payment Period**"). If Seller does not pay the GEP Damages within the Cure Payment Period, then Buyer may, at its option, declare an Event of Default pursuant to Section 7.1(b)(iv) within ninety (90) days following the Cure Payment Period. If Buyer does not (i) notify Seller of the GEP Failure or (ii) declare an Event of Default pursuant to Section 7.1(b)(iv) within the ninety (90) day period, if Seller has failed to pay the GEP Damages, then Buyer shall be deemed to have waived its right to declare an Event of

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Default based on Seller's failure with respect to the Performance Measurement Period which served as the basis for the Notice of GEP Failure, GEP Damages, or default.

ARTICLE 4 PROJECT DESIGN AND CONSTRUCTION

4.1 *Project Development.*

Seller, at no cost to Buyer shall:

- (a) Design and construct the Project.
- (b) Seller shall have sole responsibility for the development, design and construction of the Project and Seller's Interconnection Facilities and all related metering facilities, including the obligation to obtain all necessary permits and execute all necessary agreements with the Interconnection Provider and Transmission Operator necessary for the ownership, construction, operation and maintenance of the Project and delivery of Net Output in accordance with the terms hereof. Seller shall be responsible for filing all interconnection requests, including the ERCOT Resource Asset Registration Form, with ERCOT for interconnecting the Project with the Transmission Operator's System.
- (c) Acquire all Governmental Approvals and other approvals necessary for the construction, operation, and maintenance of the Project.
- (d) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project, including all environmental analysis for the Project and related interconnection facilities.
- (e) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project.
- (f) Within fifteen (15) days after each semi-anniversary of the Effective Date until the Commercial Operation Date, provide to Buyer a Semiannual Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The Semiannual Progress Report shall identify the milestones and indicate whether Seller has met or is on target to meet such milestones.
- (g) Provide access to Buyer, its authorized agents, employees and inspectors for purpose of inspecting the Project's construction site or on-site Seller data and information pertaining to the Project during normal business hours upon reasonable advance Notice.

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- (h) Provide QSE services.

4.2 *Guaranteed Commercial Operation.*

(a) Seller shall cause the Project to achieve Commercial Operation by the Guaranteed Commercial Operation Date, unless extended in accordance with Section 4.2(b).

(b) Permitted Extensions to the Guaranteed Commercial Operation Date are as follows:

(i) The Guaranteed Commercial Operation Date may be extended on a day for day basis for a cumulative period equal to no more than one hundred eighty (180) days if Seller has used Commercially Reasonable Efforts to have the Project physically interconnected to the Transmission Operator's System and to complete all electric interconnection upgrades, if any, but such interconnection or electric interconnection upgrades cannot be completed by the Guaranteed Commercial Operation Date and Seller has worked diligently to resolve the delay ("**Transmission Delay**");

(ii) The Guaranteed Commercial Operation Date may be extended on a day for day basis for a cumulative period equal to no more than one hundred eighty (180) days if Seller has used commercially reasonable efforts to obtain permits necessary for the construction and operation of the Project, but is unable to obtain such permits and Seller has worked diligently to resolve the delay ("**Permitting Delay**"); and

(iii) The Guaranteed Commercial Operation Date may be extended on a day for day basis for a cumulative period equal to no more than one hundred eighty (180) days in the event of Force Majeure ("**Force Majeure Extension**"); provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

(c) Notwithstanding the foregoing, if Seller claims more than one Permitted Extension under Section 4.2(b), such extensions cannot cumulatively exceed one hundred eighty (180) days and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(d) If Seller claims a Permitted Extension, Seller shall provide Buyer with ninety (90) days' Notice prior to the Guaranteed Commercial Operation Date, which Notice must clearly identify the Permitted Extension being claimed and include information necessary for Buyer to verify the length and qualification of the extension; provided that in the case of a Force Majeure Extension, if ninety (90) days is

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impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

4.3 Cure Period and Delay Damages.

(a) Seller shall cause the Project to achieve the Commercial Operation by the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions, then Buyer shall be entitled to draw upon the Project Development Security for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (1) the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions for up to a total of one hundred eighty (180) days ("**Project Cure Period**").

(b) Each Party agrees and acknowledges that the damages that Buyer would incur due to Seller's delay in achieving the Guaranteed Commercial Operation Date may be difficult or impossible to determine with certainty and the Daily Delay Damages are an appropriate approximation of such damages.

4.4 COD Conditions.

The Parties shall cooperate to facilitate Seller's testing of the Project necessary to satisfy the COD Conditions. Seller shall provide Buyer Notice of the date Seller believes that the Project has achieved Commercial Operation along with written confirmation (substantially in the form attached hereto as Exhibit H) by an officer of Seller, authorized to bind Seller and who is familiar with the Project, of the satisfaction or occurrence of all COD Conditions. Buyer shall have up to ten (10) Business Days to review such evidence and raise any Commercially Reasonable objection to Seller's satisfaction of any of the COD Conditions, provided, however, that such Notice shall be deemed accepted by Buyer if Buyer fails to object within such time period. Seller may provide Notice of completion of the COD Conditions on an individual and incremental basis pending resolution of any objections, provided, however, that Buyer shall in all cases have up to ten (10) Business Days to review and object to each Notice, and such Notice shall be deemed accepted by Buyer if Buyer fails to object within such time period. The COD Conditions are:

(a) all necessary and material permits, consents, licenses, approvals, and authorizations required to be obtained by Seller from any Governmental Authority to construct and/or operate the Project in compliance with Applicable Law and this Agreement have been obtained and are in full force and effect;

(b) Seller is in compliance with this Agreement in all material respects;

(c) The Project is available to commence normal operations and able to be delivered to Buyer at the Delivery Point in accordance with Seller's Operating

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Procedures, the construction contract, and applicable manufacturers' warranties;

(d) Seller is obligated under, and in material compliance with, the Interconnection Agreement;

(e) The Project is fully interconnected to the Transmission Operator's System, has been fully tested, has achieved initial synchronization, and has been successfully operated at a generation level acceptable to the Transmission Operator, without experiencing any abnormal or unsafe operating conditions on any interconnected system;

(f) Seller has completed and met all testing requirements of the Project and Seller's Interconnection Facilities required by the Interconnection Agreement;

(g) Seller has used Commercially Reasonable Efforts to timely make, where applicable, all necessary governmental filings and/or applications for renewable energy credit accreditation and registration;

(h) Seller has made all other arrangements necessary to deliver the Product to the Delivery Point; and

(i) Seller has demonstrated the reliability of the Project's communications systems and communication interface with Buyer's QSE.

ARTICLE 5 METERING AND MEASUREMENT

5.1 *Project Metering.*

The Project will be installed utilizing the existing interconnection agreement associated with the wind project owned by Capricorn Ridge Wind IV, LLC (the "**Wind Project**"). The Project will be registered with ERCOT as a Split Generation Resource in accordance with ERCOT Protocols 10.3.2.1 through 10.3.2.1.6.

5.2 *Metering System.*

The Seller shall ensure the Metering Systems, including all equipment required to provide ERCOT and Buyer, or their agents and successors, with a Real-Time MW signal of the Split Generation Resources, are designed, located, constructed, installed, owned, operated and maintained in accordance with the Interconnection Agreement and Prudent Operating Practices in order to measure and record the amount of Energy delivered from the Project to the Delivery Point. The meters shall be of a mutually acceptable accuracy range and type to the Parties, as agreed upon in the Operating Procedures. The Metering Systems will be installed and owned,

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operated and maintained in accordance with the terms of the Interconnection Agreement. Buyer shall, in no way, be responsible, financially or otherwise, for the Project's Metering Systems.

5.3 Inspection and Adjustment.

(a) The Parties shall inspect and test all meters at such times as will conform to Prudent Operating Practices, but not less often than every two (2) Contract Years. Seller shall contact Buyer for the purpose of witnessing and verifying proper inspection and adjustment, if any, to meters.

(b) If any seal securing the metering is found broken, if the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one percent (1.0%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of Energy made by the Metering System during: (i) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the second half of the period from the date of the last test of the Metering System to the date such failure is discovered or such test is made ("Adjustment Period"). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (A) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (B) if not so ascertainable, by estimating on the basis of deliveries made under similar conditions during the period since the last test. No later than thirty (30) Days after the determination of the amount of any adjustment, Buyer shall pay Seller any additional amounts then due for deliveries of Energy during the Adjustment Period or, conversely, Buyer shall be entitled to a credit against any subsequent payments for Energy.

(c) Buyer and its representatives shall be entitled to be present at any test, inspection, maintenance, adjustments and replacement of any part of the Metering System relating to obligations under this Agreement.

ARTICLE 6 EARLY TERMINATION

6.1 Early Termination.

(a) In addition to applicable termination rights under Sections 7.2 and 15.1, this Agreement may be terminated prior to the expiration of the Term as follows:

(i) By Seller if an Interconnection Agreement in form and substance satisfactory to Seller, in its sole discretion, is not executed on or before the Guaranteed Commercial Operation Date *provided* that, in each

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case, Seller shall give Buyer Notice of such termination within fifteen (15) Days after such date;

(ii) By Seller in the event that Seller has not obtained the necessary fee, leasehold or other title to or interest in the Site and all Governmental Approvals necessary to construct and operate the Project in the manner contemplated by this Agreement and which are final and no longer subject to appeal or legal challenge, on or before the Guaranteed Commercial Operation Date *provided* that Seller gives Buyer Notice of such termination within fifteen (15) Days after such date;

(iii) By Seller if all approvals of its management and board of directors (or equivalent governing body) required for the execution, delivery and performance of this Agreement have not been granted on or before the Guaranteed Commercial Operation Date *provided* that Seller shall provide Buyer Notice of such termination within fifteen (15) Days after such date; and

(iv) By Buyer, if all approvals by the Denton City Council required for the execution, delivery and performance of this Agreement have not been granted on or before May 30, 2018, *provided* that Buyer provide Seller Notice of such termination within fifteen (15) Days after such date.

(b) Notwithstanding any provision of this Agreement to the contrary, in the event of termination pursuant to this Section 6.1, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination, *provided, however*, that such termination shall not discharge or relieve either Party from any obligation that has accrued prior to such termination, any indemnity obligations under ARTICLE 11, or the confidentiality obligations set forth in ARTICLE 13, which provisions shall survive any termination of this Agreement.

(c) If the Agreement is terminated by Seller pursuant to Sections 6.1(a)(i) through (iii), Buyer shall have the right to retain the Project Development Security as its sole and exclusive remedy for such termination. For the avoidance of doubt, if this Agreement is terminated by Buyer pursuant to Section 6.1(a)(iv), Buyer shall return the Project Development Security to Seller no later than ten (10) days after the termination date.

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ARTICLE 7
EVENTS OF DEFAULT

7.1 Events of Default.

An “**Event of Default**” shall mean,

(a) with respect to a Party that is subject to the Event of Default (the “**Defaulting Party**”) the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof; provided, however, that if such failure is not reasonably capable of being remedied within the thirty (30) day cure period, such Party shall have such additional time (not exceeding an additional ninety (90) days) as is reasonably necessary to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy.

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with ARTICLE 14;

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party; or

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

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(i) Seller fails to satisfy the Performance Assurance requirements set forth in Section 9.4, as applicable, in each case within five (5) Business Days after receipt of Notice of such failure;

(ii) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project; or

(iii) failure by Seller to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, after given effect to Permitted Extensions or through payment of Daily Delay Damages.

(iv) failure by Seller to achieve the Guaranteed Energy Production requirement as set forth in Section 3.21(a) of this Agreement after the one (1) year GEP Cure period Seller (A) has failed to cure the GEP Failure and (B) has failed to pay GEP Damages in the time period set forth in Section 3.21(f).

7.2 Remedies; Declaration of Early Termination Date.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the right to the following:

(a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") on which it shall, as Seller's sole and exclusive remedy, (i) collect the Damage Payment if any Event of Default arose at any time prior to the commencement of the Delivery Term, or (ii) collect the Termination Payment if any Event of Default arose during the Delivery Term;

(b) accelerate all amounts owing between the Parties and end the Delivery Term effective as of the Early Termination Date;

(c) withhold any payments due to the Defaulting Party under this Agreement;

(d) suspend performance; and

(e) exercise its rights pursuant to Section 9.4 to draw upon and retain Performance Assurance.

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7.3 *Termination Payment.*

The “**Termination Payment**” shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. Except in the case of a termination of this Agreement by the Non-Defaulting Party solely as a result of an Event of Default by the Defaulting Party under Section 7.1(a)(iv), if the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a Commercially Reasonable manner, a Settlement Amount as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Environmental Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the termination of this Agreement would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with the termination of this Agreement but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect to terminate this Agreement as its remedy for an Event of Default by the Defaulting Party.

7.4 *Notice of Payment of Termination Payment.*

As soon as practicable after a designation of the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within twenty (20) Business Days after such Notice is effective.

7.5 *Disputes with Respect to Termination Payment.*

If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with ARTICLE 17.

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7.6 *Rights and Remedies Are Cumulative.*

Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this ARTICLE 7 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

7.7 *Mitigation.*

Any Non-Defaulting Party shall attempt to mitigate its Costs and Losses resulting from any Event of Default of the other Party under this Agreement.

7.8 *Project Investor Cure Periods.*

Notwithstanding the foregoing provisions of this ARTICLE 7, in the case of an Event of Default by Seller, Buyer will provide Project Investors (if any) with notice of such Event of Default in accordance with the Project Investor information set forth in Exhibit I (which information may be updated from time to time upon Notice to Buyer without Amendment to this Agreement) concurrent with the delivery of such notice to Seller. Such Project Investors shall have the right (but not the obligation) either to cure the Event of Default on behalf of Seller, or upon payment to Buyer of amounts due from Seller but not paid by Seller, to assume, or cause its designee or a lessee or purchaser of the Project to assume, all of the rights and obligations of Seller under this Agreement arising as of the date of such assumption, as more fully described in Section 14.4, for a period of ninety (90) days commencing upon the expiration of any cure period applicable to Seller under Section 7.1(a).

**ARTICLE 8
PAYMENT**

8.1 *Billing and Payment.*

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.

due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

8.2 *Disputes and Adjustments of Invoices.*

A Party may, in good faith, (a) dispute the correctness of any invoice, or any adjustment to an invoice, rendered under this Agreement or (b) adjust any invoice for any arithmetic or computational error, in each case within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution. Inadvertent overpayments shall be returned upon request within ten (10) calendar days. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.2 within twenty-four (24) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twenty-four (24) month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.3 *Netting of Payments.*

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

ARTICLE 9 INSURANCE, CREDIT AND COLLATERAL REQUIREMENTS

9.1 *Insurance.*

In connection with Seller's performance of its duties and obligations under this Agreement, during the Delivery Term, Seller shall maintain insurance in accordance with Exhibit G.

9.2 *Grant of Security Interest.*

To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance hereunder, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation

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thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Buyer's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default by Seller or an Early Termination Date as a result thereof, Buyer may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under Law then in effect; (ii) exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all or any portion of any Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

9.3 *Seller Financial Statements.*

If requested by Buyer, the Seller shall deliver within one hundred twenty (120) days following the end of each fiscal year of Seller's Ultimate Parent Company: (i) a copy of Seller's Ultimate Parent Company's annual report or 10K report, and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller's Ultimate Parent Company's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, in each case unless otherwise publicly available. If any such statements shall not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the Seller diligently pursues the preparation, certification and delivery of the statements.

9.4 *Performance Assurance.*

(a) Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:



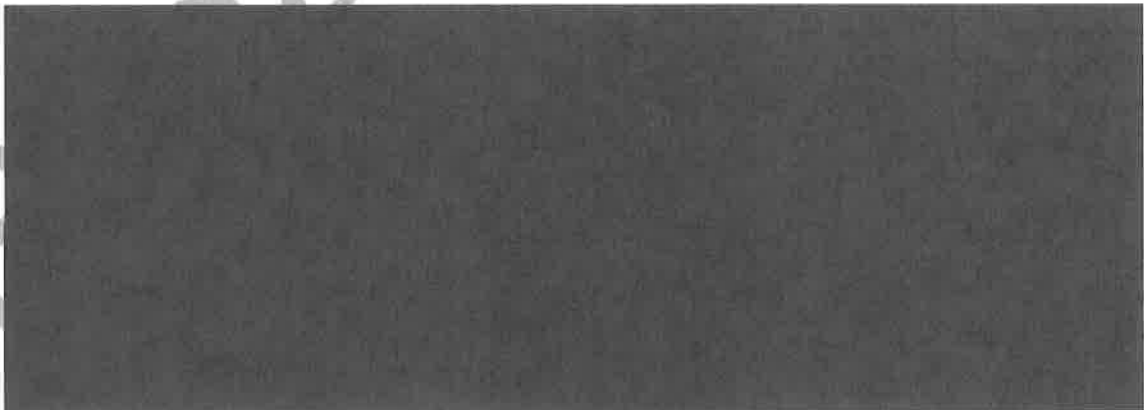
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form of cash, Letter of Credit or Guaranty from the Commercial Operation Date until the end of the Term; provided that Seller may elect to apply the Project Development Security toward the Delivery Term Security.

(b) If, after the Commercial Operation Date, no amounts are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn, if applicable, in accordance with Section 9.4(c). The Project Development Security (or portion thereof) shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security unless, with respect to cash held as Project Development Security, Seller elects to apply the Project Development Security toward the Delivery Term Security.

(c) Any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) and not satisfied within thirty (30) Days of becoming due and owing may be satisfied by Buyer on a draw on Seller's Performance Assurance until such Performance Assurance has been exhausted. In addition, upon termination, Buyer shall have the right to draw upon Seller's Performance Assurance for any undisputed amounts owed to Buyer under this Agreement if not paid when due pursuant to Section 8.1. Seller's Performance Assurance shall not be subject to replenishment; however, lack of Performance Assurance funds due to draw-down by Buyer does not excuse Seller from those amounts due and owing, if any, to Buyer by Seller.

(d) Cash held by Buyer as Seller's Performance Assurance shall be held in an interest bearing account provided that, interest on cash held as Project Development Security shall be retained by Buyer until Seller posts the Delivery Term Security. Upon Seller's posting of the Delivery Term Security, all accrued interest on the Project Development Security shall be transferred to Seller in the form of cash by wire transfer to the bank account specified by Seller. After Seller posts the Delivery Term Security, Buyer shall transfer (as described in the preceding sentence), on or before each Interest Payment Date, the amount of interest due to Seller for such Delivery Term Security.



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(f) Seller's obligation to maintain the applicable Performance Assurance shall terminate upon the occurrence of the following: (i) the Term of the Agreement has ended, or the Agreement has been terminated pursuant to Section 7.2, as applicable; and (ii) all payment obligations of each Party arising under this Agreement, Termination Payment, indemnification payments or other damages are paid in full. Upon the occurrence of the foregoing, each Party shall promptly return to the other Party the unused portion of the applicable Performance Assurance, including the payment of any interest due thereon.

(g) Any Letter of Credit provided pursuant to this Agreement must provide, among other things, that the Buyer is entitled to draw the full amount of such Letter of Credit if: (i) the Letter of Credit has not been renewed or replaced within thirty (30) days prior to the expiration date of the Letter of Credit; or (ii) the issuer of the Letter of Credit fails to maintain (1) a Credit Rating of at least A- from S&P and at least A3 from Moody's or (2) assets of at least \$10 Billion, and, in each case, the Party required to provide the Letter of Credit has failed, within ten (10) Business Days after receipt of Notice thereof by Buyer to replace such Letter of Credit with another Letter of Credit, in a form reasonably acceptable to the issuer of the Letter of Credit and Buyer. Costs of a Letter of Credit shall be borne by Seller.

ARTICLE 10

REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 *Representations and Warranties.*

On the Effective Date, each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has all Governmental Approvals necessary for it to perform its obligations under this Agreement, and, in the case of Seller, all Governmental Approvals necessary to construct, operate and maintain the Project and related interconnection facilities;

(c) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;

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(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(f) except as may be set forth in its reports filed with the SEC, there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(i) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

10.2 General Covenants.

Each Party covenants that throughout the Term:

(a) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(b) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(c) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Law; and

(d) it shall not dispute its status as a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

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10.3 *Seller Covenants.*

Seller covenants as follows:

(a) during the Delivery Term, the Project shall be operated and maintained in accordance with this Agreement, Applicable Laws, and Prudent Operating Practices; and

(b) throughout the Term that it, or its permitted successors or assigns, shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project.

10.4 *Buyer's Covenants.*

Buyer covenants as follows:

(a) from the date hereof through the expiration or termination of this Agreement, Buyer shall comply with this Agreement and Applicable Laws;

(b) Buyer will, at Seller's expense, reasonably cooperate with Seller in opposing, and will not support any action of any regulatory body having jurisdiction thereover that could result in the modification or vitiation of any of the terms or conditions hereof or have any other material adverse effect on Seller, the Project or this Agreement; and

(c) Buyer's obligations under this Agreement shall qualify as operating expenses which enjoy first priority payment at all times under any and all bond or other ordinances or indentures to which Buyer is a party and shall be included as part of the rate calculations required by any rate-related debt covenants to which Buyer is bound.

ARTICLE 11 TITLE, RISK OF LOSS, INDEMNITIES

11.1 *Title and Risk of Loss.*

Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to or at the Delivery Point.

11.2 *Indemnities by Seller.*

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Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("**Claims**") resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product delivered under this Agreement up to and at the Delivery Point, (ii) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Project, (iii) the failure by Seller or the failure of the Project to comply with Applicable Laws, (iv) any Governmental Charges for which Seller is responsible hereunder, or (v) any liens, security interests, encumbrances, or other adverse claims against the Product delivered hereunder made by, under, or through Seller, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

11.3 Indemnities by Buyer.

To the fullest extent allowed by Applicable Law, Buyer shall release, indemnify, defend, and hold harmless, Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product received by Buyer under this Agreement after the Delivery Point, (ii) the failure by Buyer to comply with Applicable Laws, or (iii) any Governmental Charges for which Buyer is responsible hereunder, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

ARTICLE 12 GOVERNMENTAL CHARGES

12.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

12.2 Governmental Charges.

Except as provided in Section 3.3(b), Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("**Governmental Charges**") on or with respect to the Product or

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the transaction under this Agreement arising prior to and at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid applicable Governmental Charges on or with respect to the Product or the transaction under this Agreement from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement and shall show such deductions on invoices provided by Seller to Buyer. If Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts within thirty (30) calendar days. 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.

ARTICLE 13 CONFIDENTIAL INFORMATION

13.1 *Confidential Information.*

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Project that they consider confidential and proprietary (together with the terms and conditions of this Agreement, the "Confidential Information"). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "**Disclosing Party**") may make such Confidential Information available to the other (each, a "**Receiving Party**") subject to the provisions of this Section 13.1.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall:

(i) Treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as required by law, subject to the restrictions set forth below;

(ii) Restrict access to such Confidential Information to only those employees, Affiliates, subcontractors, suppliers, vendors, and advisors whose access is reasonably necessary for the development, construction, operation or maintenance of the Project and for the purposes of this Agreement who shall be bound by the terms of this Section 13.1;

(iii) Use such Confidential Information solely for the purpose of developing the Project and for purposes of this Agreement; and

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(iv) Upon the termination of this Agreement, destroy or return any such Confidential Information in written or other tangible form and any copies thereof.

(c) The restrictions of this Section 13.1 do not apply to:

(i) Release of this Agreement to any Governmental Authority required for obtaining any approval or making any filing pursuant to Section 12.2, *provided* that each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law;

(ii) Information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;

(iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party, *provided* that the Person or Persons developing such information have not had access to any Confidential Information;

(iv) Information which is received from a third party which is not known (after due inquiry) by Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) Information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law (including any Freedom of Information Act or Texas Public Information Act request); *provided, however*, that the Receiving Party, prior to such disclosure, shall provide reasonable advance Notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.

(d) Notwithstanding the foregoing, Seller may disclose Confidential Information to the Project Investors and any other financial institutions expressing an interest in providing equity or debt financing or refinancing and/or credit support to Seller, and the agent or trustee of any of them.

(e) Neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information, with the intent that such information

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will be published (other than information that is, in the reasonable written opinion of counsel to the Disclosing Party, required to be distributed or disseminated pursuant to Applicable Law, *provided* that the Disclosing Party has given Notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 13.1(c)(v)), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval will not be unreasonably withheld, conditioned or delayed. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project or as are necessary in order to fulfill such Party's obligations under this Agreement.

(f) The obligations of the Parties under this Section 13.1 shall remain in full force and effect for three (3) years following the expiration or termination of this Agreement.

13.2 Texas Public Information Act.

Notwithstanding any other provision of this ARTICLE 13, 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 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.

ARTICLE 14 ASSIGNMENT

14.1 Successors and Assigns.

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

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14.2 *Assignment by Seller.*

(a) This Agreement shall not be assigned or transferred by Seller without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Notwithstanding the foregoing, no consent shall be required for:

(i) Any assignment of this Agreement by Seller to any Project Investors as collateral security for obligations under the financing documents entered into with such Project Investors; or

(ii) Any assignment by the Project Investors to a third party after the Project Investors have exercised their foreclosure rights with respect to this Agreement or the Project.

(iii) Any assignment or transfer of this Agreement by Seller to an Affiliate of Seller, provided that such Affiliate's creditworthiness is equal to or better than that of Seller, and that such Affiliate has the technical ability necessary to perform all of the Seller's obligations under the Agreement, and such Affiliate undertakes the legal obligations to perform all such obligations under the Agreement;

(iv) Any assignment or transfer of this Agreement by Seller to a Person succeeding to all or substantially all of the assets of Seller, provided that such Person's creditworthiness is equal to or better than that of Seller, and that such Person has the technical ability necessary to perform all of the Seller's obligations under the Agreement, and such Person undertakes the legal obligations to perform all such obligations under the Agreement.

(c) Buyer acknowledges that upon an event of default under any financing documents relating to the Project, any of the Project Investors may (but shall not be obligated to) assume, or cause its designee or a new lessee or purchaser of the Project to assume, all of the interests, rights and obligations of Seller thereafter arising under this Agreement, provided that, regardless of whether any such Project Investor or its designee assumes all of the interests, rights and obligations of Seller thereafter arising under this Agreement, Buyer's interests, rights and obligations under this Agreement will remain in full force and effect.

(d) If the rights and interests of Seller in this Agreement shall be assumed, sold or transferred as herein provided, and the assuming party shall agree in writing to be bound by and to assume, the terms and conditions hereof and any and all obligations to Buyer arising or accruing hereunder from and after the date of such assumption, then Seller shall be released and discharged from the terms and conditions hereof and each

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such obligation hereunder from and after such date, and Buyer shall continue this Agreement with the assuming party as if such Person had been named as Seller under this Agreement; *provided, however*, that if any such Person assumes this Agreement as provided herein, Buyer acknowledges and agrees that such Persons shall not be personally liable for the performance of such obligations hereunder except to the extent of the total interest of the Project Investors in the Project. Notwithstanding any such assumption by any of the Project Investors or a designee thereof, Seller shall not be released and discharged from and shall remain liable for any and all obligations to Buyer arising or accruing hereunder prior to such assumption.

(e) The provisions of this Section 14.2 are for the benefit of the Project Investors as well as the Parties hereto, and shall be enforceable by the Project Investors as express third-party beneficiaries hereof. Buyer hereby agrees that none of the Project Investors, nor any bondholder or participant for whom they may act or any trustee acting on their behalf, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to Buyer with respect to this Agreement except to the extent any of them becomes a party hereto pursuant to this Section 14.2.

14.3 Assignment by Buyer.

(a) This Agreement shall not be assigned or transferred by Buyer without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Notwithstanding the foregoing, no consent shall be required for:

(i) Any assignment or transfer of this Agreement by Buyer to an Affiliate of Buyer, provided that such Affiliate's creditworthiness is equal to or better than that of Buyer, and that such Affiliate has the technical ability necessary to perform all of the Buyer's obligations under the Agreement, and such Affiliate undertakes the legal obligations to perform all such obligations under the Agreement;

(ii) Any assignment or transfer of this Agreement by Buyer to a Person succeeding to all or substantially all of the assets of Buyer, provided that such Person's creditworthiness is equal to or better than that of Buyer, and that such Person has the technical ability necessary to perform all of the Buyer's obligations under the Agreement, and such Person undertakes the legal obligations to perform all such obligations under the Agreement.

(c) If the rights and interests of Buyer in this Agreement shall be assumed, sold or transferred as herein provided, and the assuming party shall agree in writing to be bound by and to assume, the terms and conditions hereof and any and all obligations to

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Seller arising or accruing hereunder from and after the date of such assumption, then Buyer shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and Seller shall continue this Agreement with the assuming party as if such Person had been named as Buyer under this Agreement.

14.4 Collateral Assignment.

(a) Seller, without approval of Buyer, may, by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Project and the Seller's Interconnection Facilities.

(b) Promptly after making such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Project Investor to which Seller's interest under this Agreement has been encumbered. Such Notice shall include the names of the account managers or other representatives of the Project Investors to whom all written and telephonic communications may be addressed.

(c) After giving Buyer such initial Notice, Seller shall promptly give Buyer Notice of any change in the information provided in the initial Notice or any revised Notice.

(d) If Seller encumbers its interest under this Agreement as permitted by this Section 14.4, the following provisions shall apply:

(i) The Parties, except as provided by the terms of this Agreement, shall not modify or cancel this Agreement without the prior written consent of the Project Investors;

(ii) The Project Investors or their designees shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure an Event of Default by Seller and such act performed by the Project Investors or their designees shall be as effective to prevent or cure an Event of Default as if done by Seller, provided that, if any such Project Investor or its designee elects to perform any act required to be performed by Seller under this Agreement to prevent or cure an Event of Default by Seller, Buyer will not be deemed to have waived or relinquished its rights and remedies as provided in this Agreement;

(iii) Buyer shall, upon request by Seller, execute statements certifying that this Agreement is unmodified (or, modified and stating the nature of the modification), in full force and effect and the absence or existence (and the nature thereof) of Events of Default hereunder by Seller

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and documents of consent to such assignment to the encumbrance and any assignment to such Project Investors; and

(iv) Upon the receipt of a written request from Seller or any Project Investor, Buyer shall execute, or arrange for the delivery of, such certificates, opinions and other documents as may be reasonably necessary in order for Seller to consummate any financing or refinancing of the Project or any part thereof and will enter into reasonable agreements with such Project Investor, which agreements will grant certain rights to the Project Investors as more fully developed and described in such documents, including (a) this Agreement shall not be terminated (except for termination pursuant to the terms of this Agreement) without the consent of Project Investor, which consent is not to be unreasonably withheld, conditioned or delayed, (b) Project Investors shall be given notice of, and the opportunity to cure as provided in Section 14.4(d)(ii), any breach or default of this Agreement by Seller, (c) that if the Project Investor forecloses, take a deed in lieu of foreclosure or otherwise exercise its remedies pursuant to any security documents, then (i) Buyer shall, at Project Investor's request, continue to perform all of its obligations hereunder, and Project Investor or its nominee may perform in the place of Seller, and may assign this Agreement to another Person in place of Seller, (ii) Project Investor shall have no liability under this Agreement except during the period of such Project Investor's ownership or operation of the Project and (iii) that Buyer shall accept performance in accordance with this Agreement by Project Investor or its nominee, and (d) that Buyer shall make representations and warranties to Project Investor as Project Investor may reasonably request with regard to (1) Buyer's existence, (2) Buyer's authority to execute, deliver and perform this Agreement, (3) the binding nature of the document evidencing Buyer's consent to assignment to Project Investor and this Agreement on Buyer and (4) receipt of regulatory approvals by Buyer with respect to its execution and performance under this Agreement.

ARTICLE 15

FORCE MAJEURE

15.1 *Force Majeure Events.*

To the extent either Party is prevented by a Force Majeure Event from carrying out, in whole or part, its obligations under this Agreement and such Party gives Notice and details of the Force Majeure Event to the other Party as detailed below, then, the Party impacted by the Force Majeure Event shall be excused from the performance of its obligations to the extent impacted. As soon as practicable after commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2)

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weeks of the commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim. Upon mutual agreement by the Parties, Seller may substitute Product from other similar sources for the output of the Project during an outage resulting from a Force Majeure Event. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Buyer shall not be required to make any payments for any Product that Seller fails to schedule, deliver or provide as a result of a Force Majeure Event during the term of such Force Majeure Event except where both Parties mutually agree to a substitute Product. This Agreement may be terminated by either Party with no further obligation to the other Party if such Force Majeure Event prevents the performance of a material portion of the obligations hereunder and such Force Majeure Event is not resolved within twelve (12) months after the commencement of such Force Majeure Event; *provided, however*, if Seller is the non-performing Party, Seller shall have up to ninety (90) days following such Force Majeure Event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced within twenty-four (24) additional months or less from the date of the report and provide Buyer a copy of the engineer's report, at no cost to Buyer. If such engineer's report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 15.1 until the expiration of the period deemed necessary by the engineer's report (not to exceed twenty-four (24) months), after which time, Buyer may terminate unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying its performance obligations under this Agreement.

ARTICLE 16

LIMITATIONS ON LIABILITY

16.1 *Disclaimer of Warranties.*

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

16.2 *Limitations on Liability.*

TO THE EXTENT ALLOWED BY APPLICABLE LAW, THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED 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 SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT

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LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATION IN RESPECT OF THIRD PARTY CLAIMS OR AS OTHERWISE EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF ARTICLE 11, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN 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 REQUIRED TO BE PAID 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.

ARTICLE 17 DISPUTE RESOLUTION

17.1 *Intent of the Parties.*

Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement (a "**Dispute**") is the dispute resolution procedure set forth in this ARTICLE 17. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the Dispute by means of the dispute resolution procedure set forth in this ARTICLE 17.

17.2 *Management Negotiations.*

(a) The Parties will attempt in good faith to resolve any Dispute by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "**Manager**"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting ("**Initial Negotiation End Date**"), the Managers

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shall refer the matter to the designated senior officers of their respective companies that have authority to settle the dispute (“**Executives**”). Within five (5) Business Days of the Initial Negotiation End Date (“**Referral Date**”), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date may not be later than thirty (30) days after the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 17.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 17.2(a) above, and subject to Sections 16.2, 19.7 and 19.8 of this Agreement, either Party may pursue all remedies available to it at law or in equity.

17.3 *Specific Performance and Injunctive Relief.*

Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance or restraint by injunction agree that they shall each request that all expenses incurred in such proceeding, including, but not limited to, reasonable counsel fees, be apportioned in the final decision based upon the respective merits of the positions of the Parties.

ARTICLE 18 NOTICES

18.1 *Notices.*

Whenever this Agreement requires or permits delivery of a “**Notice**” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified in herein and to the addresses set forth below; provided, however, that Notices of Outages or other Scheduling or dispatch information or requests, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Invoices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if

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received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a Schedule or Dispatch Order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

If to Seller: Bluebell Solar II, LLC
c/o NextEra Energy Resources, LLC
700 Universe Boulevard
Juno Beach, FL 33408
Attn: John DiDonato, Vice President
Telephone: (561) 691-7232
Facsimile: (561) 691-7307

If to Buyer: Denton Municipal Electric
1659 Spencer Road
Denton, TX 76205
Attn: General Manager
Telephone: (940) 349-8487
Facsimile: (940) 349-7334

With a copy to: City Attorney
215 E. McKinney Street
Denton City Hall
Denton, Texas 76201
Telephone: (940) 349-8333
Facsimile: (940) 382-7923

ARTICLE 19 MISCELLANEOUS

19.1 *Effectiveness of Agreement; Survival.*

This Agreement shall be in full force and effect, enforceable and binding in all respects as of the Effective Date until the conclusion of the Term or earlier termination pursuant to the terms of this Agreement; provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations under this Agreement, including payment in full of amounts due for the Product delivered prior to the end of the Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and

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(ii) the undrawn portion of the Project Development Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for the longer of twelve (12) months or the expiration of the statute of limitations period of the claim underlying the indemnity obligation. Notwithstanding any provisions herein to the contrary, the obligations set forth in Sections 13.1 and ARTICLE 16, the indemnity obligations set forth in ARTICLE 11, and the limitations on liabilities set forth herein shall survive (in full force) the expiration or termination of this Agreement.

19.2 Audits.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after such twelve (12)-month period.

19.3 Amendments.

This Agreement shall not be modified nor amended unless such modification or amendment shall be in writing and signed by authorized representatives of both Parties.

19.4 Waivers.

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other matter. Any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

19.5 Severability.

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect; *provided* that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any Applicable Law and the intent of the Parties.

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19.6 *Standard of Review.*

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a Person or the Federal Energy Regulatory Commission acting sua sponte shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) (the “Mobile-Sierra” doctrine).

19.7 *Governing Law.*

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

This Agreement was executed in the State of Texas and must in all respects be governed by, interpreted, construed, and shall be exclusively enforced in accordance with the laws of the State of Texas. It is agreed that the provisions and obligations of this Agreement are performable in the City of Denton, Denton County, Texas. Venue shall lie for any lawsuit dealing with this Agreement in the appropriate federal court in Texas, or, if the federal courts do not have jurisdiction, in the State District Courts in and for Denton County, Texas.

19.8 *Waiver of Trial by Jury.*

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

19.9 *Attorneys’ Fees.*

In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable

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attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

19.10 *No Third-Party Beneficiaries.*

Except as set forth in Sections 14.1, 14.4 and ARTICLE 16, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

19.11 *No Agency.*

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

19.12 *Cooperation.*

The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make Commercially Reasonable Efforts to cooperate and assist each other in making such change.

19.13 *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 19.13.

19.14 *Captions; Construction.*

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

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19.15 *Entire Agreement.*

This Agreement shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

19.16 *Forward Contract.*

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

19.17 *Counterparts.*

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURES APPEAR ON FOLLOWING PAGE]**

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IN WITNESS WHEREOF the Parties have executed this Agreement in the manner appropriate to each on the date set forth above.

"SELLER"

BLUEBELL SOLAR II, LLC
A Delaware Limited Liability Company

By: Michael O'Sullivan

Name: MICHAEL O'SULLIVAN

Title: vice president

"BUYER"

CITY OF DENTON, TEXAS
A Texas home-rule municipal corporation

By: _____
Chris Watts
Mayor

ATTEST:
JENNIFER WALTERS, CITY
SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

By: _____

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EXHIBIT A
PRODUCT CONTRACT PRICE

PERIOD	PRODUCT CONTRACT PRICE (\$/MWh)
From and including the Commercial Operation Date through the remainder of the Delivery Term	<div></div>

A-1

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Exhibit 'A'

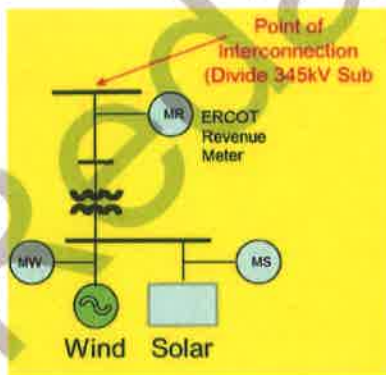
EXHIBIT B

DESCRIPTION OF PROJECT

Seller intends to build, own and operate a 100 MW photovoltaic solar energy generation facility on a site located in Sterling County, Texas located in Sterling County, Texas. The Project will generate electrical power that will be sold wholesale.

As presently planned, the Project will consist of:

- Solar equipment
- Electrical transformation equipment located at the Project
- An underground and aboveground electric cable collection system to carry electricity to the substation
- An underground and aboveground fiber-optic data collection system
- Permanent meteorological ("MET") tower(s)
- A temporary construction lay down area
- Maintenance/field office(s)
- Solar Under Wind Metering



B-1

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Exhibit 'A'

o



Nothing in this Agreement or Exhibit B is intended to either (i) limit the right of Seller to make any changes to the Project it determines to undertake, or (ii) grant any rights to Buyer regarding the description, nature or components of the Project.

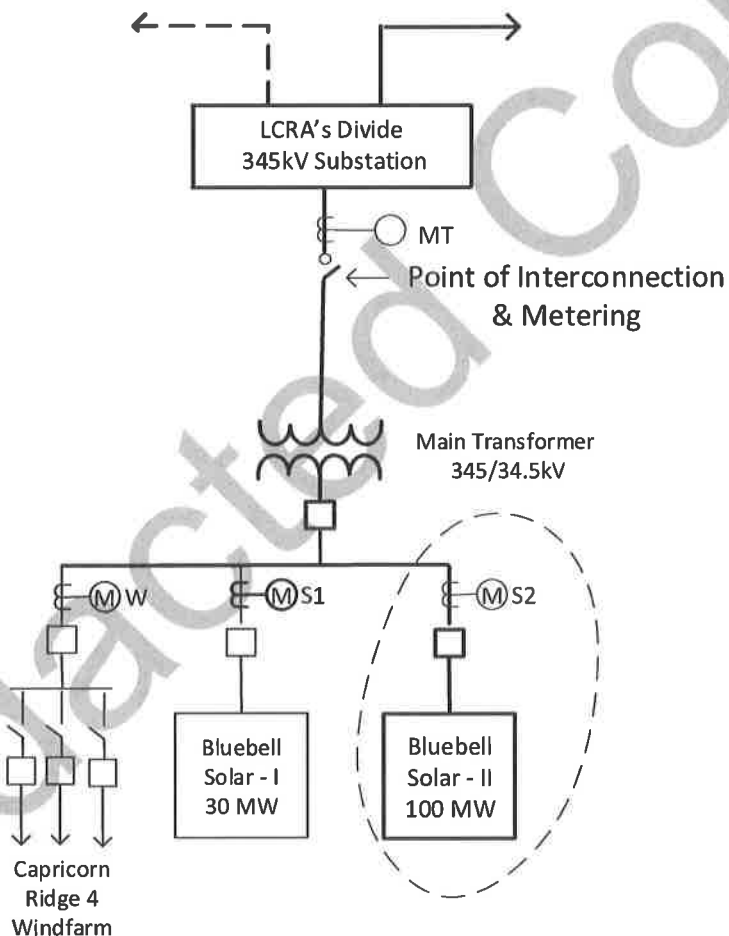
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EXHIBIT C

DESCRIPTION OF DELIVERY POINT AND ONE-LINE DIAGRAM

Conceptual Interconnection Diagram Bluebell Solar II



[TO BE UPDATED BY SELLER WHEN APPLICABLE]

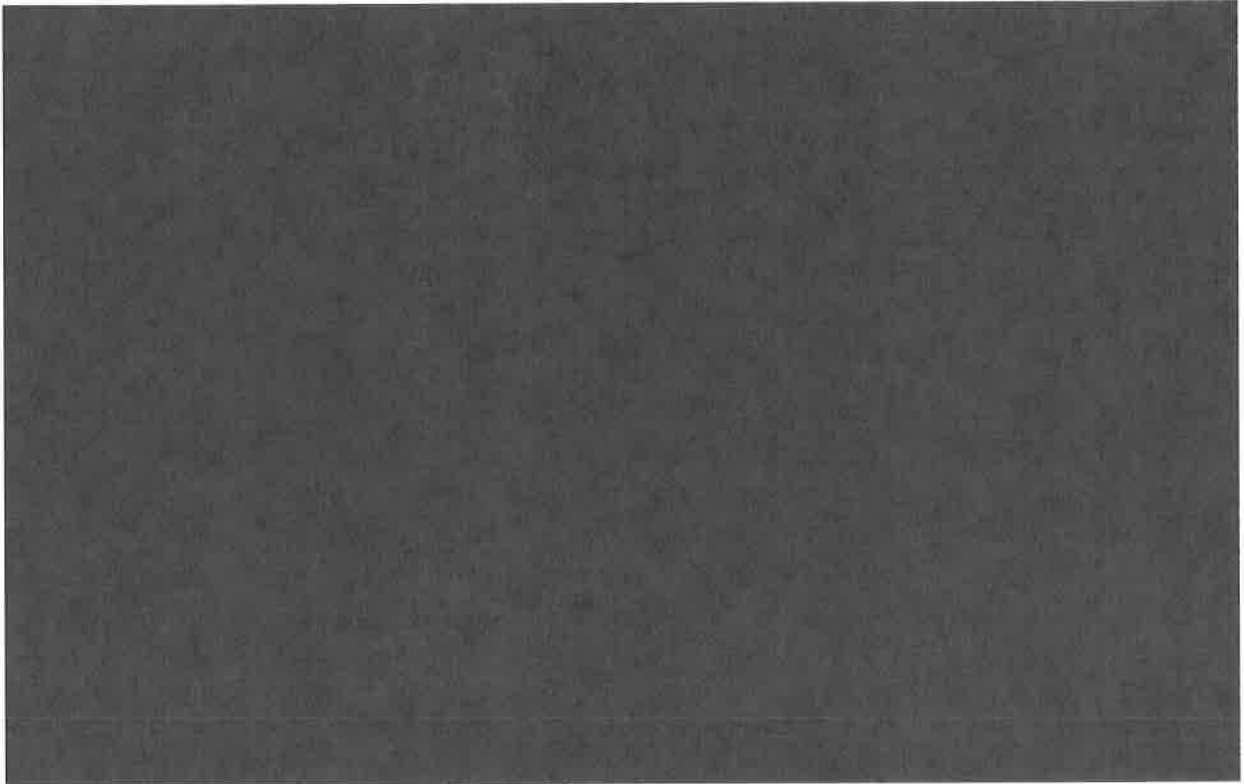
C-1

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Exhibit 'A'

EXHIBIT D

GEP DAMAGES CALCULATION



D-1

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Exhibit 'A'

EXHIBIT E
FORM OF GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of ___, 2018, (the "**Effective Date**"), is made by NEXTERA ENERGY CAPITAL HOLDINGS, INC. ("**Guarantor**"), in favor of the CITY OF DENTON, TEXAS, a Texas home-rule municipal corporation in the State of Texas ("**Counterparty**").

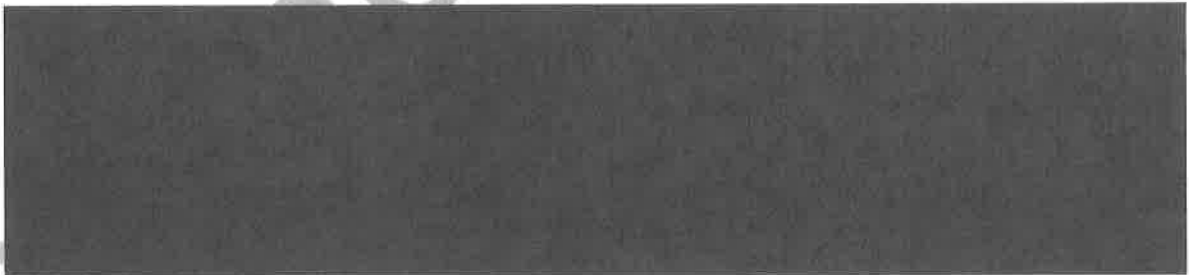
RECITALS:

- A. WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary Bluebell Solar II, LLC ("**Obligor**"), have entered into, or concurrently herewith are entering into, that certain Power Purchase Agreement dated as of ___, 2018 (together, the "**Agreement**"); and
- B. WHEREAS, Guarantor will directly or indirectly benefit from the transaction to be entered into between Obligor and Counterparty pursuant to the Agreement.

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

1. **GUARANTY**. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a)



- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney's fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). In no event, however, shall Guarantor be liable for or obligated to pay any

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Exhibit 'A'

consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. **DEMANDS AND PAYMENT.**

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an “**Overdue Obligation**”), Counterparty may present a written demand to Guarantor calling for Guarantor’s payment of such Overdue Obligation pursuant to this Guaranty (a “**Payment Demand**”).
- (b) Guarantor’s obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor’s receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term “**Business Day**” shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Florida, the State of Texas or the State of New York.

3. **REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of Florida and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability

thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. **RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. **WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of this Guaranty:

- (a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.
- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. **TERMINATION**. Unless terminated earlier, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) termination of the Agreement or (ii) June 30, 2041; provided, however, that no such termination shall affect Guarantor's liability with respect to any Obligations arising under any transactions entered into prior to the time the termination is effective, which Obligations shall remain subject to this Guaranty.

9. **NOTICE**. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

TO GUARANTOR: *	TO COUNTERPARTY: #
NextEra Energy Capital Holdings, Inc. 700 Universe Blvd. Juno Beach, Florida 33408 Attn: Treasurer	City of Denton, Texas c/o Denton Municipal Electric 1659 Spencer Road Denton, TX 76205 Attn: General Manager
[Tel: (561) 694-6204 -- for use in connection with courier deliveries]	[Tel: (940) 349-8487 -- for use in connection with courier deliveries]

* (NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. (561) 625-7504 and ATTN: Credit Department, Fax No. (561) 625-7642. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)

(NOTE: Copies of any Notices to Counterparty under this Guaranty shall also be sent via facsimile to ATTN: City Attorney's Office, City of Denton, Texas, Fax No.. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

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Exhibit 'A'

10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:
 - (i) consents and submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an

inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

- (g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

NEXTERA ENERGY CAPITAL HOLDINGS,
INC.

By: _____
Name: _____
Title: _____

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Exhibit 'A'

EXHIBIT F
FORM OF LETTER OF CREDIT

[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE:
[Date of issuance]

[BENEFICIARY] ("Beneficiary")

[Address]

Attention: **[Contact Person]**

Re: **[ISSUING BANK]** Irrevocable Standby Letter of Credit No. _____

Messrs./Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as "you") this Irrevocable Standby Letter of Credit No. _____ (the "**Letter of Credit**") for the account of *[NextEra Energy Capital Holdings, LLC]* [--- Address ---] and *[NextEra Energy Resources, LLC, (--- 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 shall be *[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), a copy 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**"), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of *Attachment B* hereto (the "**Draft**"), appropriately 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 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.

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

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Exhibit 'A'

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, [] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [] 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 prompt notice 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.

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 periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) 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 NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE "ISP98"), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

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, except for the ISP98 and Attachment A, Attachment B and Attachment C hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

* * *

SINCERELY,
[ISSUING BANK]

By: _____

Title: _____

Address: _____

Redacted Copy

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Exhibit 'A'

ATTACHMENT A

FORM OF DRAW CERTIFICATE

The undersigned hereby certifies to [ISSUING BANK] ("**Issuer**"), with reference to 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: _____

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Exhibit 'A'

ATTACHMENT B

DRAWING UNDER 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: _____

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Exhibit 'A'

ATTACHMENT C

CANCELLATION CERTIFICATE

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 Irrevocable Letter of Credit No. _____ issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of [PROJECT ENTITY], an affiliate 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: _____

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Exhibit 'A'

EXHIBIT G INSURANCE REQUIREMENTS

Before 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 Law, 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 Seller's insurance policies are to be primary and non-contributory to any insurance that may be maintained by or on behalf of Buyer.

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Exhibit 'A'

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, 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 G.

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

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Exhibit 'A'

EXHIBIT H

COMMERCIAL OPERATION CERTIFICATION

This certificate ("**Certification**") is delivered by Bluebell Solar II, LLC ("**Seller**") to Denton Municipal Electric ("**Buyer**") in accordance with the terms of that certain Power Purchase Agreement dated _____, 2018 ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

- (a) all necessary and material permits, consents, licenses, approvals, and authorizations required to be obtained by Seller from any Governmental Authority to construct and/or operate the Project in compliance with Applicable Law and this Agreement have been obtained and are in full force and effect;
- (b) Seller is in compliance with this Agreement in all material respects;
- (c) the Project is available to commence normal operations in accordance with Seller's Operating Procedures, the construction contract, and applicable manufacturers' warranties;
- (d) Seller is obligated under, and in material compliance with, the Interconnection Agreement;
- (e) the Project is fully interconnected to the Transmission Operator's System, has been fully tested, has achieved initial synchronization, and has been successfully operated at a generation level acceptable to the Transmission Operator, without experiencing any abnormal or unsafe operating conditions on any interconnected system;
- (f) Seller has completed and met all testing requirements of the Project and Seller's Interconnection Facilities required by the Interconnection Agreement;
- (g) Seller has used Commercially Reasonable Efforts to timely make, where applicable, all necessary governmental filings and/or applications for REC accreditation and registration;
- (h) Seller has made all other arrangements necessary to deliver the Net Output of the Project to the Delivery Point; and
- (i) Seller has demonstrated the reliability of the Project's communications systems and communication interface with Seller's QSE.

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Exhibit 'A'

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate on behalf of the Seller as of the ____ day of _____ 201__.

BLUEBELL SOLAR II, LLC

By: _____

Name: _____

Title: _____

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Exhibit 'A'

EXHIBIT I

PROJECT INVESTOR NOTICE INFORMATION

**[THIS PAGE INTENTIONALLY LEFT BLANK, BUT WILL BE UPDATED BY
SELLER WHEN APPLICABLE]**

Redacted Copy

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Exhibit 'A'

EXHIBIT J

OPERATING PROCEDURES CRITERIA

The Operating Procedures for the Project to be agreed upon by Buyer and Seller pursuant to Section 3.13 shall address, among others, the following:

- I. Energy Trades**
- II. Capacity Trades**
- III. Buyer Curtailment Orders**
- IV. Outage Notification**
- V. Day-Ahead Availability Notice**
- VI. Contact Information**

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Exhibit 'A'