



POWER PURCHASE AGREEMENT

Buyer: Duke Energy Progress, LLC

Overnight Mail: 400 South Tryon Street
Mail Code: ST 14Q
Charlotte, North Carolina 28202
Regular Mail: PO Box 1006
Mail Code: ST 14Q
Charlotte, NC 28201-1006
Attn.: Contract Administrator
DERContracts@duke-energy.com

*With Additional Notices of Events of Default
Or Potential Event of Default to:*
Overnight Mail: 550 S. Tryon St.
Charlotte, North Carolina 28202
Regular Mail: P.O. Box 1321, DEC45
Charlotte, North Carolina 28201-1321
Attn.: VP Commercial Legal Support

Seller: Buncombe County, North Carolina
Buncombe County Solid Waste
81 Panther Branch Road
Alexander, North Carolina 28701
Attn.: Dane Pedersen

This Power Purchase Agreement, including Exhibits 1-4 hereto, which are incorporated into and made part hereof (collectively, the "Agreement"), is made and entered into by and between Buncombe County, North Carolina ("Seller") and Duke Energy Progress, LLC ("Buyer") under the terms specified herein, effective as of the 21st day of November, 2021 (the "Effective Date"). Buyer and Seller may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Seller owns the Facility (as defined herein) located in Buncombe County, North Carolina which is a "qualifying facility" under PURPA;

WHEREAS, Seller and Buyer entered into that certain Power Purchase Agreement effective as of October 31, 2011 (the "Previous PPA"), pursuant to which Seller agreed to sell all capacity and energy from the Facility to Buyer; and

WHEREAS, the Previous PPA has or will expire by its terms on November 20, 2021 and the Parties desire to enter into this Agreement to supersede and replace the Previous Agreement in its entirety and to document the terms and conditions pursuant to which Seller shall sell and deliver and Buyer shall purchase the capacity and energy from the Facility for the Term as defined herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the Parties hereto mutually contract and agree as follows:

1. **Definitions**

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

Unless defined in the body of the Agreement, any capitalized term herein shall have the meaning set forth below:

- 1.1. "AAA" is defined in Section 23.2.1.
- 1.2. "Abandon(s)" means the relinquishment of control or possession of the Facility and/or cessation of operations of or at the Facility by Seller. "Abandon" excludes cessation of generation to comply with Prudent Utility Practices, Permitted Excuse to Perform, or due to maintenance or repair of the Facility (including Maintenance Outages and Planned Outages), provided that such maintenance or repair activities are being performed in a Commercially Reasonable Manner and with Prudent Utility Practice.
- 1.3. "Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, or otherwise have control of an entity, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer the term Affiliate does not include any subsidiaries or affiliates whose activities are subject to the oversight or regulation of any state commission(s) and/or federal energy regulatory commission.
- 1.4. "Agreement" is defined in the introductory paragraph hereof.
- 1.5. "Assignment" is defined in Section 24.1.
- 1.6. "Back-Up Tapes" is defined in Section 16.3.
- 1.7. "Bankrupt" means, with respect to a Party or any Affiliate of such Party that is currently acting as its credit support provider, that such Party or Affiliate acting as credit support provider: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors; (c) has such a petition filed against it as debtor and such petition is not stayed, withdrawn, or dismissed within sixty (60) Business Days of such filing; (d) seeks or has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (e) has a distress, execution, attachment, sequestration or other legal process levied or enforced on or against all or substantially all of its assets; (f) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or (g) otherwise becomes bankrupt or insolvent (however evidenced).
- 1.8. "Billing Meter" is defined in Section 10.
- 1.9. "Billing Period" is defined in Section 11.
- 1.10. "Business Day" means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time.
- 1.11. "Buyer" shall have the meaning specified in the first paragraph of this Agreement.
- 1.12. "Capacity" means and includes the electric generation capability and ability of the Facility and all associated characteristics and attributes, inclusive of the ability to contribute to peak system demands, as well as reserve requirements.
- 1.13. "Change of Control" means a transaction or series of related transactions (by way of merger, consolidation, sale of stock or assets, or otherwise) with any person, entity or "group" (within the meaning of Section 13(d)(3) of the U.S. Securities Exchange Act of 1934) of persons pursuant to which such person, entity, or group would directly or indirectly acquire (i) 50% or more of the voting interests in Seller or (ii) substantially all of the assets of Seller. Notwithstanding the foregoing, a Change of Control shall not be deemed to occur based on an internal reorganization where the ultimate parent of the Seller (as of the Effective Date) directly or indirectly retains 50% or more of the voting interests in Seller or substantially all of its assets and provided that Seller has provided Buyer no less than thirty (30) days prior written notice of such reorganization.

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

- 1.14. "Commercially Reasonable Manner" or "Commercially Reasonable" means, with respect to a given goal or requirement, the manner, efforts and resources a reasonable person in the position of the promisor would use, in the exercise of its reasonable business discretion and industry practice, so as to achieve that goal or requirement, which in no event shall be less than the level of efforts and resources standard in the industry for comparable companies with respect to comparable products. Factors used to determine whether a goal or requirement has been performed in a "Commercially Reasonable Manner" may include, but shall not be limited to, any specific factors or considerations identified in the Agreement as relevant to such goal or requirement.
- 1.15. "Commission" means the North Carolina Utilities Commission, or any successor thereto.
- 1.16. "Contract Price" is defined in Section 4.3.
- 1.17. "Contract Quantity" is defined in Section 4.2.
- 1.18. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses, and other 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 the terminated transaction(s), and all reasonable attorneys' fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination.
- 1.19. "Credit Rating" means, with respect to any entity, the 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 a corporate or issuer rating.
- 1.20. "Creditworthy" or "Creditworthiness" - means (i) a Person with an investment grade Credit Rating from two (2) of the three (3) Rating Agencies such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least (A) BBB- by S&P, if rated by S&P, (B) Baa3 by Moody's, if rated by Moody's, and (C) BBB- by Fitch, if rated by Fitch, respectively, or (ii) has satisfactory and verifiable creditworthiness determined in Buyer's reasonable discretion.
- 1.21. "Defaulting Party" is defined in Section 19.1.
- 1.22. "Delivery Period" is defined in Section 4.1.
- 1.23. "Delivery Point" means the point of interconnection between the Facility and the System on the high side (Buyer or Transmission Provider side) of the System.
- 1.24. "Dispatch Down" is defined in Section 8.6.
- 1.25. "Dispatch Down Payment Event" is defined in Section 8.6.
- 1.26. "Disputes" is defined in Section 23.1.
- 1.27. "Early Termination Date" is defined in Section 20.1.
- 1.28. "Effective Date" is defined in the introductory paragraph hereto.
- 1.29. "Emergency Condition" means, no matter the cause: (a) any urgent, abnormal, operationally unstable, dangerous, or public safety condition that is existing on the System or any portion thereof; (b) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) loss or damage to the Facility or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on the System, or (iv) condition that may result in endangerment to human life or public safety; or, (c) any circumstance that requires action by the System Operator to comply with standing NERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to the Facility, loss or damage to the System, disruption of generation by the Facility, disruption of service on the System, an abnormal condition on the System, and/or endangerment to human life or safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or Seller's failure to perform as required under this Agreement.

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

- 1.30. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.
- 1.31. "EPT" or "Eastern Prevailing Time" means the time in effect in the Eastern Time Zone of the United States of America, whether it be Eastern Standard Time or Eastern Daylight Savings Time.
- 1.32. "Estimation Methodology" is defined in Section 8.6.2.
- 1.33. "Event of Default" is defined in Section 19.1.
- 1.34. "Facility" means Seller's 1.415 MW electric generating facility, using landfill gas as a fuel source and located in Buncombe County, North Carolina, at 85 Panther Branch Road, Alexander, North Carolina 28701, as further identified in Exhibit 3.
- 1.35. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.36. "Fitch" - means Fitch Ratings Ltd. or its successor.
- 1.37. "Force Majeure" is defined in Section 14.1.
- 1.38. "GAAP" is defined in Section 9.1.
- 1.39. "Gains" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.40. "Governmental Authority" means any federal, state or local government, legislative body, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body, including, without limitation, the Commission.
- 1.41. "Guarantor" means any Creditworthy Person having the authority and agreeing to guarantee a Party's obligations under this Agreement and is otherwise acceptable to Buyer in its reasonable discretion.
- 1.42. "Guaranty" means a parent company guaranty, in substantially the form set forth in Exhibit 5 attached hereto, provided by a Guarantor in favor of Buyer guaranteeing the obligations of Seller under this Agreement.
- 1.43. "Interconnection Agreement" means the separate interconnection and transmission service agreement (or agreements) to be negotiated and executed between Seller and the Transmission Provider concerning the interconnection of the Facility with the System and the requirements for transmission service.
- 1.44. "Interconnection Instruction" means any order, action, signal, requirement, demand, and/or direction, howsoever provided or implemented by the System Operator due to, in response to, or to address any condition relating to any service and/or obligation occurring under the Interconnection Agreement.
- 1.45. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%); and, (b) the maximum rate permitted by applicable law.
- 1.46. "kW" means kilowatt.

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

- 1.47. "kWh" means kilowatt-hour.
- 1.48. "Letter(s) of Credit" means one or more irrevocable standby letters of credit substantially in the form of Exhibit 6 attached hereto (with only such changes as the issuing bank may reasonably require and as may be acceptable to Buyer in its reasonable discretion), issued by a U.S. commercial bank or other financial institution reasonably acceptable to Buyer,, which is not an Affiliate of Seller, which has and maintains a Credit Rating of at least A- from S&P and A3 from Moody's, for the Security Period, permitting Buyer to draw the entire amount if either such amount is owed or such Letter of Credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date.
- 1.49. "Lien" means any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, or encumbrance of any nature whatsoever.
- 1.50. "Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic loss or loss of economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.51. "Maintenance Outage" means the temporary operational removal of the Facility from service to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.
- 1.52. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.53. "MW" means megawatt.
- 1.54. "MWh" means megawatt-hour.
- 1.55. "Nameplate Capacity Rating" means the maximum generating capability of the Facility as measured at the Delivery Point (AC) as set forth in Exhibit 3.
- 1.56. "NERC" means the North American Electric Reliability Corporation. For purposes of this Agreement, NERC includes any applicable regional entity with delegated authority from NERC, such as the SERC Reliability Corporation (SERC).
- 1.57. "Non-Defaulting Party" is defined in Section 20.
- 1.58. "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.59. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or a Guaranty that is acceptable to Buyer in its sole discretion, in each case that meets the requirements set forth in this Agreement (including, without limitation, Section 5) provided by Seller to Buyer for the benefit of Buyer pursuant to this Agreement, as credit support, adequate assurances, and security to secure Seller's performance under this Agreement.
- 1.60. "Permit" means any permit, license, registration, filing, certificate of occupancy, certificate of public convenience and necessity, approval, variance or any authorization from or by any Governmental Authority and pursuant to any Requirements of Law.
- 1.61. "Permitted Excuse to Perform" means that Seller's obligation to generate, deliver, and sell and Buyer's obligation to receive and purchase is excused and no damages will be payable by either Party to the other Party, if and to the extent such failure is due solely to any of the following occurrences: (a) an Emergency Condition and/or (b) a Force Majeure event.
- 1.62. "Person" means any individual, entity, corporation, general or limited partnership, limited

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

liability company, joint venture, estate, trust, association or other entity or Governmental Authority.

- 1.63. "Planned Outage" means the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility.
- 1.64. "Product" means the Capacity of the Facility and Energy generated by the Facility.
- 1.65. "Protected Information" is defined in Section 16.1
- 1.66. "Prudent Utility Practice" means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities similar to the Facility, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.
- 1.67. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as may be amended from time to time.
- 1.68. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.
- 1.69. "Qualifying Facility" means an electric generating facility that has been registered and certified by FERC as generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.
- 1.70. "Rating Agency" or "Rating Agencies" - means the rating entities of S&P, Moody's or Fitch.
- 1.71. "Regulatory Event" is defined in Section 15.1.
- 1.72. "Required Approval" is defined in Section 6.1.
- 1.73. "Requirements of Law" means any applicable federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree or Permit enacted, adopted, issued or promulgated by any Governmental Authority, including, without limitation, (i) PURPA, (ii) those pertaining to the creation and delivery of the Product, (iii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.
- 1.74. "Security Period" is defined in Section 5.7.
- 1.75. "Seller" shall have the meaning specified in the first paragraph of this Agreement.
- 1.76. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency thereto.
- 1.77. "Station Power" means the Energy generated by the Facility and, whether metered or unmetered, used on-site to supply the Facility's auxiliary load and parasitic load and/or for powering the electric generation equipment. Station Power shall not include any Energy generated by the Facility and stored for later delivery to the Buyer under this Agreement.
- 1.78. "System" means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, and/or operated by Buyer and/or the Transmission Provider, including, without limitation, facilities to provide retail and/or

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

wholesale service, substations, circuits, reinforcements, meters, extensions, and equipment associated with or connected to any interconnected facility or customer.

- 1.79. "System Operator" means the operators of the System that have the responsibilities for ensuring that the System as a whole or any part thereof operates safely, efficiently and reliably, including without limitation, the responsibilities to comply with any applicable operational or reliability requirements, the responsibilities to balance generation supply with customer load, the responsibilities to comply with any other regulatory obligation and the responsibilities to provide dispatch and curtailment instructions to generators supplying Energy to the System, and includes any person or entity delivering any such instruction to Seller.
- 1.80. "System Operator Instruction" means any order, action, requirement, demand, or direction, from the System Operator in accordance with Prudent Utility Practice, and delivered to Seller in a non-discriminatory manner, to operate, manage, and/or otherwise maintain safe and reliable operations of the System, including, without limitation those undertaken and implemented by the System Operator, in its sole discretion based on relevant System factors and considerations, including any and all operating characteristics, maintenance requirements, operational limitations, reliability (including, without limitation, standing NERC regulations or standards), safety, dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other System considerations, which may include, without limitation, an order or action to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the System, (ii) increase (based on generator characteristics and Prudent Utility Practices), reduce, or cease generation output to comply with standing NERC regulations or standards; (iii) respond to any transmission, distribution, or delivery limitations or interruptions; (iv) perform or cease performing any activity so as to operate in accordance with System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability generators to accommodate generation by the Facility; and, (v) suspend or interrupt any operational activity for an Emergency Condition or Force Majeure event; provided however, a System Operator instruction in response to an Emergency Condition, Force Majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory.
- 1.81. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.82. "Term" is defined in Section 3.1.
- 1.83. "Transmission Provider" means the entity or division within Duke Energy Progress, LLC that will provide interconnection and/or electric distribution or transmission service to enable delivery of Energy generated by the Facility to Buyer, and any such entity or division will include any successor or replacement thereto, including without limitation, a consolidated control area or a regional transmission organization.

2. Interpretation

- 2.1. **Intent.** Unless a different intention clearly appears, the following terms and phrases shall be interpreted as follows: (a) the singular includes the plural and vice versa; (b) the reference to any Person includes such Person's legal and/or permitted successors and assignees, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) the reference to any gender includes the other gender and the neuter; (d) reference to any document, including this Agreement, refers to such document as it may be amended, amended and restated, modified, replaced or superseded from time to time in accordance with its terms, or any successor document(s) thereto; (e) reference to any section or exhibit means such section or exhibit of this Agreement unless otherwise indicated; (f) "hereunder", "hereof", "hereto", "herein", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular section or other provision; (g) "including" (and with correlative meaning "include") means "including without limitation"

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

and, when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope; (h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (i) reference to any Requirements of Law refers to such Requirements of Law as it may be amended, modified, replaced or superseded from time to time, or any successor Requirements of Law thereto; and (j) all exhibits and attachments to this Agreement are hereby incorporated into this Agreement. Other terms used, but not defined in Section 1 or in the body of the Agreement, shall have meanings as commonly used in the English language and, where applicable, in the electric utility industry. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

3. Term and Termination

- 3.1. Term. This Agreement shall be effective on the Effective Date and shall remain in full force and effect until the third (3rd) anniversary of the Effective Date ("Term"), unless terminated earlier pursuant to the provisions of this Agreement.
- 3.2. Termination and Survival. This Agreement may be terminated as provided for herein prior to the expiration of the Term. If this Agreement is terminated earlier than the expiration of the Term for any reason, including, without limitation, whether by its terms, mutual agreement, early termination, and/or event of default, such termination shall not relieve any Party of any obligation accrued or accruing prior to the effectiveness of such termination. Furthermore, any obligations, limitations, exclusions and duties which by their nature or the express terms of this Agreement extend beyond the expiration or termination of this Agreement, including, without limitation, provisions relating to compliance requirements, accounting, billing, billing adjustments, limitations or liabilities, dispute resolution, Performance Assurance, and any other provisions necessary to interpret or enforce the respective rights and obligations of the Parties hereunder, shall survive the expiration or early termination of this Agreement.

4. Purchase and Sale Obligations

- 4.1. Delivery Period. The "Delivery Period" for the Product to be generated by the Facility and sold by Seller to Buyer shall be for all hours starting at 12:00:01 AM EPT on the Effective Date through 11:59:59 PM EPT on the last day of the Term, unless this Agreement is terminated earlier pursuant to its terms and conditions.
- 4.2. Contract Quantity. The "Contract Quantity" will be one hundred percent (100%) of the Capacity, output of Energy (including stored Energy) produced by the Facility, less that associated with Station Power.
 - 4.2.1. Seller shall sell and deliver the Contract Quantity of the Product exclusively and solely to Buyer. Seller's failure to generate, sell, and deliver the Contract Quantity of the Product to Buyer will be excused with no damages payable to Buyer solely to the extent such failure is due to a Permitted Excuse to Perform.
 - 4.2.2. Buyer shall have no obligation to receive, purchase, pay for, or pay any damages associated with not receiving the Product due to a Permitted Excuse to Perform. Buyer shall have full and exclusive rights to the Product, and will be entitled to full and exclusive use of the Product (inclusive of all components) for its purposes and in its sole and exclusive discretion.
 - 4.2.3. The estimated monthly and annual Energy production of the Facility during the Delivery Period is set forth in Exhibit 1 hereto. Notwithstanding any provision herein, Seller is under no obligation to produce and deliver any minimum quantity of Energy and shall suffer no liability if it produces a smaller amount of Energy than the estimated monthly and annual Energy production of the Facility.
- 4.3. Contract Price. The "Contract Price" for the Product shall be the price corresponding to the relevant portion of the Delivery Period as set forth in Exhibit 2.

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

- 4.4. Energy Delivery. Seller shall deliver the Contract Quantity of the Product at the Delivery Point, and Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Product to the Delivery Point. Buyer will have no obligation to pay for any Product not delivered to the Delivery Point.
- 4.5. Payment for Product. During the Term of this Agreement, Buyer agrees to pay Seller the product of (i) the Contract Price for the Product, as applicable, multiplied by (ii) the amount of Energy delivered by Seller to Buyer at the Delivery Point during the Delivery Period.
- 4.6. Transfer. In no event will Seller procure or have the right to procure the Product or any component of the Product from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Product sold and delivered hereunder shall transfer from Seller to Buyer after completion of delivery at the Delivery Point. Seller shall be responsible for any costs and charges imposed on or associated with the Product and the delivery of the Product at the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point.
- 4.7. Power Factor Correction. Unless the Seller is required by a separate operating agreement with Buyer to adjust VAR production to support voltage control, when the Seller consumes VARs supplied by the Buyer or the Seller delivers VARs to Buyer, the Buyer may reduce the purchased energy measured in kilowatt-hours for that month by multiplying by the average consumed power factor. The average consumed power factor shall be the calculated by Buyer on a monthly basis as the average kWh delivered by Seller under this Agreement divided the average kVAh, where average kVAh shall be the square root of the sum of the average kWh squared plus the average consumed and delivered kVARh squared. Buyer reserves the right to install facilities necessary for the measurement of power factor and to adjust the Interconnection Facilities Charge accordingly, solely at the option of Buyer.

Credit and Related Provisions.

- 4.8. Performance Assurances. If at any time during the Term of this Agreement, Seller ceases to be Creditworthy due to a change in its Credit Rating Buyer may, by providing written notice to Seller, request that Seller provide Buyer with Performance Assurance in an amount reasonably determined by Buyer relative to Seller's performance obligations under this Agreement. Upon receipt of such notice, Seller shall have five (5) Business Days to provide such Performance Assurance to Buyer. Notwithstanding the foregoing, any Performance Assurance required under this Section 5.1 shall not exceed thirteen thousand U.S. dollars (\$13,000) (the "Posting Cap").
- 4.9. Netting. If an Event of Default has not occurred and a Party is required to pay an amount to the other Party under this Agreement, then such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. All outstanding obligations to make payment under this Agreement may be netted, offset, set off, or recouped therefrom, and payment shall be owed as set forth above. Unless Buyer notifies Seller in writing (except in connection with a liquidation and termination) all amounts netted pursuant to this section shall not take into account or include any credit support, which may be in effect to secure Seller's performance under this Agreement. The netting set forth above, shall be without prejudice and in addition to any and all rights, liens, setoffs, recoupments, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement.
- 4.10. Set-off. In addition to any rights of set-off a Party may have as a matter of law or otherwise and subject to applicable law, upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party under this Agreement (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party under this

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

Agreement (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in a Commercially Reasonable Manner estimate that obligation and set-off in respect of the estimate, subject to the relevant Party providing an accounting and true-up to the other Party after the amount of the obligation is ascertained.

- 4.1.1. Performance Assurance Requirements. Seller shall ensure that any Performance Assurance, if required hereunder, remains in full force and effect and outstanding for the duration required by this Agreement. All applicable Performance Assurance, in the amount required pursuant to the terms of this Agreement, shall remain in full force and effect and outstanding for the benefit of Buyer until sixty (60) days following the later of (a) the end of the Term or (b) the date on which Seller has fully satisfied all obligations to Buyer under this Agreement (the "Security Period"). If at any time any Performance Assurance fails to meet any of the requirements under this Agreement, Seller shall replace such Performance Assurance with alternative Performance Assurance that meets each of the requirements under this Agreement. Seller will be solely responsible for any and all costs incurred with providing and maintaining any Performance Assurance to the full amount required by this Agreement. If Seller fails to replace, renew, or otherwise maintain the required Performance Assurance as and when required by this Agreement, then Buyer: (a) shall be entitled to draw and retain hereunder the full amount of the Performance Assurance; (b) shall not be obligated to make any further payments to Seller until Seller shall have provided Buyer with the replacement Performance Assurance; and, (c) shall be entitled to give Seller notice of an Event of Default and pursue the termination rights and remedies provided for in this Agreement.

5. Seller Compliance Requirements.

- 5.1. Required Approvals. Seller shall at its sole cost and expense timely obtain, maintain, and comply with all Required Approvals (definition follows) during the Term of this Agreement. "Required Approvals" means all of the following:
- 5.1.1. All approvals and certifications that the Facility is a Qualifying Facility.
- 5.1.2. All required Permits, authorizations, certifications, and/or approvals from any Governmental Authority and under any Requirements of Law, including, without limitation, from the Commission or FERC, for Seller to construct, build, own, operate, and maintain the Facility and sell and deliver the Product to Buyer in accordance with the requirements under this Agreement.
- 5.2. Seller Covenants. Seller covenants and represents and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that: (a) Seller has obtained an approved and valid certificate of public convenience and necessity for the Facility from the Commission; (b) Seller has obtained or shall obtain if determined to be necessary by Buyer, an Interconnection Agreement for the Facility (c) Seller has secured from the Transmission Provider(s) the firm transmission required to deliver the Product to the Delivery Point; and (d) Seller has obtained all applicable certifications and/or approvals for the Facility from FERC. Seller agrees and acknowledges that Buyer has entered into this Agreement in reliance upon the covenants and warranties set forth above in this section, and in the event of a breach or failure of or relating to any of the foregoing covenants and warranties, including without limitation for being false or misleading in any respect, then this Agreement will terminate upon Buyer providing Seller with thirty (30) day's written notice, unless such breach or failure has been cured before the end of such thirty (30) day period. Seller will indemnify and hold Buyer harmless for any breach or failure relating to any of the foregoing covenants and warranties, notwithstanding anything else to the contrary in this Agreement.
- 5.3. Seller Requirements. Within twenty (20) Business Days of a written request from Buyer, Seller agrees to provide Buyer with all information, documents, and affidavits from a duly authorized representative of Seller certifying that the Facility fully complies with PURPA.

6. Seller's Facility Requirements.

- 6.1. Seller Requirements. Seller covenants (except to the extent expressly set forth in this Agreement) that: the Facility shall be operated, controlled, maintained, and tested at Seller's

EXECUTION COPY

ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

sole cost and expense; the Facility shall be operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, maintained, and tested by Seller to perform as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with the requirements of each applicable Requirements of Law and Prudent Utility Practice; and, that all contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the construction, ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, grading and building permits, and contracts and/or licenses to obtain the underlying fuel, install and operate the Facility, and deliver and sell the Product of the Facility) shall be timely obtained and maintained by Seller, at Seller's sole cost and expense. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility. Seller shall operate and maintain the Facility in accordance with Prudent Utility Practice. Seller shall be responsible for all costs, charges, and expenses associated with generating, scheduling, and delivering the Energy to Buyer.

- 6.2. Seller Responsibilities. Notwithstanding any provision of this Agreement to the contrary, the Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the design, development, construction, maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Governmental Authority on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances *inter alia* for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller.
- 6.2.1. No Exclusions. If any production or investment tax credit, grants, subsidy, or any other similar incentives or benefit relating, directly or indirectly, to the Facility is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; and, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.
- 6.3. Transmission Provider. Seller agrees and acknowledges that the Interconnection Agreement contemplated hereunder, if required, shall be a separate agreement (or agreements) between Seller and Transmission Provider, and will exclusively govern all requirements and obligations between Seller and Transmission Provider. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible for under the Interconnection Agreement. Seller shall comply with all Interconnection Instructions. Nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligation, and liabilities under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider, and the terms of this Agreement are not (and will not) be binding upon the Transmission Provider. Seller agrees and acknowledges that Seller's performance under this Agreement depends on Seller's performance under the Interconnection Agreement, and Seller hereby grants Buyer the right and entitlement to obtain information from the Transmission Provider in regard to Seller's performance under the Interconnection Agreement.
- 6.4. System Operations. Seller agrees and acknowledges that the System Operator will be solely responsible for its functions, and that nothing in this Agreement will be construed to create any rights between Seller and the System Operator. Seller agrees that it is obligated to engage

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

in interconnected operations with Buyer and the System, and Seller agrees to fully comply with all System Operator Instructions.

- 6.5. **Insurance Obligations.** Throughout the Term of this Agreement, and at no additional cost to Buyer, Seller shall maintain or self-insure, occurrence form insurance coverage as follows: (a) Workers' Compensation in accordance with the statutory requirements of the state in which the Services are performed and Employer's Liability Insurance of not less than \$500,000 each accident/employee/disease; (b) Commercial General Liability Insurance having a limit of at least \$1,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and damage to property, premises and operations liability and explosion, collapse, and underground hazard coverage; (c) Commercial/Business Automobile Liability Insurance (including owned (if any), non-owned or hired autos) having a limit of at least \$1,000,000 each accident for bodily injury, death, property damage and contractual liability; and (d) Property Damage insurance on the Facility written on an all risk of loss basis;. All insurance policies provided and maintained by Seller or applicable party shall: (i) be underwritten by insurers which are rated A.M. Best "A- VII" or higher; (ii) specifically include Buyer as additional insured's, excluding, however, for Worker's Compensation/Employer's Liability and Property Damage insurance; (iii) be endorsed to provide, where permitted by law, waiver of any rights of subrogation against Buyer; and (iv) provide that such policies and additional insured provisions are primary and without right of contribution from any other insurance, self-insurance or coverage available to Buyer. Any deductibles or retentions shall be the sole responsibility of Seller or the applicable party. Seller's compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of Seller's liability pursuant to this Agreement. Any failure to comply with and these provisions shall not be deemed a waiver of any rights of Buyer under this Agreement or with respect to any insurance coverage required hereunder. Buyer at its sole discretion may request Seller to provide a copy of any or all of its required insurance policies, including endorsements in which Buyer is included as an additional insured for any claims filed relative to the Facility or this Agreement.
7. **Facility Performance Requirements**
- 7.1. **Planned Outages.** No later than fifteen (15) Business Days prior to the end of each year during the Term, Seller shall provide to Buyer a Planned Outage schedule for the upcoming year. Seller shall provide Buyer with reasonable advance notice of any material change in the Planned Outage schedule. Seller shall determine the number and extent of Planned Outages in a Commercially Reasonable Manner recognizing that it is the intent of the Parties to maximize production of the Facility and to such extent Seller shall be excused from providing the Product during such Planned Outage(s). Unless both Parties expressly agree otherwise, any Planned Outage shall only occur during the months of March, April, May, September, October, or November.
- 7.2. **Maintenance Outages.** If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.
- 7.3. **Notice.** Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.

- 7.4. Performance. Seller shall act in a Commercially Reasonable Manner to maximize the output of the Facility in a safe manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product, in each case consistent with Prudent Utility Practice.
- 7.5. System Operator Instructions and Payments. Seller shall cooperate with Buyer to immediately and fully comply with all System Operator Instructions. If the System Operator requires the Facility to reduce or stop the generation of Energy pursuant to a System Operator Instruction (such reductions or cessations of Energy, the "Dispatch Down" of production by the Facility), Buyer shall pay Seller the amount set forth below if, and only if: (i) the Facility was operating at the time of the Dispatch Down instruction, and was required to and actually reduced Energy production pursuant to a Dispatch Down instruction; (ii) the actual reduction of Energy generation by the Facility due to Dispatch Down instructions exceeds four hundred eleven (411) MWh (the "Dispatch Down Payment Threshold") in a calendar year (January – December); and, (iii) the Dispatch Down instruction was not due to an Emergency Condition or Force Majeure event (the foregoing items (i)-(iii), collectively, the "Dispatch Down Payment Event").
- 7.5.1. For each calendar year, after a Dispatch Down Payment Event occurs during that calendar year, Buyer shall pay Seller starting with the four hundred twelfth (412th) MWh, at the Contract Price for the Product multiplied by the units of Product not generated due to the Dispatch Down instruction(s).
- 7.5.2. Estimation Methodology. Buyer shall determine in a Commercially Reasonable Manner the quantity of Energy that could not be generated due to compliance with and implementation of the Dispatch Down instruction(s) based on: (i) the duration of the Dispatch Down; (ii) the amount of the generating capability of the Facility that is curtailed by the applicable Dispatch Down (e.g. 10% generation capability is curtailed); and (iii) the Facility design, performance capability, and historic performance (the "Estimation Methodology").
- 7.5.3. In the event Seller demonstrates that a Dispatch Down instruction issued by the System Operator does not fall within the definition of a System Operator Instruction and that the Facility actually reduced Energy production pursuant to such Dispatch Down instruction, Seller shall be entitled to a compensatory payment from Buyer, calculated using the Estimation Methodology, in the amount of the Contract Price for the Product not generated due to compliance with the Dispatch Down instruction (starting with the first MWh of Product not generated) as Seller's sole and exclusive payment and remedy for its compliance with such instruction.

8. Information Requirements

- 8.1. Accounting Information. Generally Accepted Accounting Principles ("GAAP") and SEC rules can require Buyer to evaluate various aspects of its economic relationship with Seller, e.g., whether or not Buyer must consolidate Seller's financial information. To evaluate if certain GAAP requirements are applicable, Buyer may need access to Seller's financial records and personnel in a timely manner. In the event that Buyer determines that consolidation or other incorporation of Seller's financial information is necessary under GAAP, Buyer shall require the following for each calendar quarter during the term of this Agreement, within 90 days after quarter end: (a) complete financial statements, including notes, for such quarter on a GAAP basis; and, (b) financial schedules underlying the financial statements. Seller shall grant Buyer access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with GAAP standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer pursuant to this section shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed, as required by GAAP, on an aggregate basis with other similar entities for which Buyer has power purchase agreements.

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

- 8.2. Facility Information. Seller shall promptly provide to Buyer information requested by Buyer to verify any amounts of delivered Product, or to otherwise audit the Product delivered to Buyer. Seller shall, within ten (10) Business Days of electronic or written request provide Buyer with any other information germane to this Agreement and/or Seller's performance under and compliance with this Agreement, requested by Buyer in its Commercially Reasonable discretion.
- 8.3. Other Information. Seller shall provide to Buyer all information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facility as reasonably requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements reasonably determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority.

9. Metering

- 9.1. Billing Meter. In the Interconnection Agreement between Seller and Transmission Provider, Seller shall arrange with the Transmission Provider to construct and install such meters and metering equipment as are necessary to measure the Energy delivered and received in accordance with the terms and conditions of this Agreement (the "Billing Meter"). Buyer shall provide to Seller the reasonable allowable accuracy limits relating to the performance of the Billing Meter, and Seller shall arrange with Transmission Provider to install and operate a Billing Meter that meets the allowable accuracy limits. Seller shall be responsible for paying the Transmission Provider for all costs relating to the Billing Meter, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with the Transmission Provider for the Billing Meter to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller hereby grants Buyer with rights to physically access the Billing Meter. Seller shall provide Buyer (at Seller's cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Seller may, at its own expense, install and maintain additional metering equipment for purposes of monitoring, recording or transmitting data relating to its sale of Energy from the Facility, so long as such equipment does not interfere with the Billing Meter. Seller shall arrange with the Transmission Provider to test the Billing Meter at regular intervals. Seller shall also arrange for either Party to have the right to request and obtain, at reasonable intervals and under reasonable circumstances, additional/special tests of the Billing Meter. The Party making such request for the test shall incur the costs associated with such test.

10. Billing Period and Payment

- 10.1. Billing Period. Subject to Seller authorizing Transmission Provider to provide Buyer with electronic access to the Billing Meter, Buyer shall read/obtain data from the Billing Meter at regular intervals, which shall be not less than twenty-seven (27) consecutive days and not more than thirty-three (33) consecutive days (each, a "Billing Period") except for the initial and final billing periods hereunder which may be shorter to permit the readings to otherwise coincide with calendar months. Within twenty-five (25) days after reading/obtaining data from the Billing Meter, Buyer shall provide Seller with an invoice detailing the amount of Product delivered during the relevant Billing Period and the associated amount owed by Buyer to Seller for the Product, subject to Seller cooperating with Buyer and providing Buyer with such information and/or data that Buyer may request to accurately prepare the invoice. Buyer shall pay Seller the invoiced amounts for each Billing Period. Payment by Buyer shall be due thirty (30) days after the invoice date. If such amounts are not paid by the deadline, they shall accrue interest at the Interest Rate from the applicable due date until the date paid. Amounts not paid by such deadline shall accrue interest at the Interest Rate from the original due date until the date paid in accordance with this Agreement.
- 10.2. Meter Malfunction. In the event the Billing Meter fails to register accurately within the allowable accuracy limits as set forth above, then for purposes of preparing (or adjusting) any affected invoice Buyer shall adjust the amount of measured Energy for the period of time the Billing Meter was shown to be in error. If the time the Billing Meter became

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

inaccurate can be determined, then the adjustment to the amount of measured Energy shall be made for the entire time from the time that the Billing Meter became inaccurate until the recalibration of the Billing Meter. If the time the Billing Meter became inaccurate cannot be determined, then the Billing Meter shall be deemed to have failed to register accurately for fifty percent (50%) of the time since the date of the last calibration of the Billing Meter.

- 10.3. Out-of-Service. If the Billing Meter is out of service, then for purposes of preparing any affected invoice, the Parties shall negotiate in good faith to determine an estimate of the amount of Energy delivered during the relevant Billing Period. Seller's meter (if any), may be used to establish such estimate, if both Parties agree. If, within twenty (20) days after the date that the Billing Meter is read as set forth above, the Parties have not reached agreement regarding an estimate of the amount of Energy delivered during the relevant Billing Period, then the amount of Energy delivered during the relevant Billing Period shall be determined using the Estimation Methodology.
- 10.4. Errors. If any overcharge or undercharge in any form whatsoever shall at any time be found for an invoice, and such invoice has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within forty-five (45) days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twenty-four (24) months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated at the Interest Rate from the date that the undercharge or overcharge actually occurred.
- 10.5. Invoice/Payment Dispute. If a Party in good faith reasonably disputes the amount set forth in an invoice, charge, statement, or computation, or any adjustment thereto, such Party shall provide to the other Party a written explanation specifying in detail the basis for such dispute. The Party disputing the invoice, if it has not already done so, shall pay the undisputed portion of such amount no later than the applicable due date. If the Parties are thereafter unable to resolve the dispute through the exchange of additional documentation, then the Parties shall pursue resolution of such dispute according to the dispute resolution and remedy provisions set forth in the Agreement. Notwithstanding any other provision of this Agreement to the contrary, if any invoice, statement charge, or computation is found to be inaccurate, then a correction shall be made and payment (with applicable interest) shall be made in accordance with such correction; provided, however, no adjustment shall be made with respect to any invoice, statement, charge, computation or payment hereunder unless a Party provides written notice to the other Party questioning the accuracy thereof within twenty-four (24) months after the date of such invoice, statement, charge, computation, or payment.

11. Audit Rights

- 11.1. Process. Buyer shall have the right, at its sole expense and during normal business hours, without Seller requiring any compensation from Buyer, to examine and copy the records of Seller to verify the accuracy of any invoice, statement, charge or computation made hereunder or to otherwise verify Seller's performance under this Agreement, including, without limitation, verifying that the delivered Product complies with the Agreement.
- 11.2. Survival. All audit rights shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months after the expiration or termination. Seller shall retain any and all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

12. Taxes

- 12.1. Seller. Seller shall be liable for and shall pay Buyer, or Seller shall reimburse Buyer if Buyer has paid or cause to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising prior its delivery to and at the Delivery Point (including ad valorem, franchise or income taxes which are related to the sale

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Seller shall indemnify, defend, and hold harmless Buyer from any liability for such Taxes, including related audit and litigation expenses.

- 12.2. **Buyer.** Buyer shall be liable for and shall pay Seller, or Buyer shall reimburse Seller if Seller has paid or caused to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising after the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Buyer shall indemnify, defend, and hold harmless Seller from any liability for such Taxes, including related audit and litigation expenses.
- 12.3. **Remittances.** In the event Seller is required by any Requirements of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may request reimbursement of such payment from Buyer by sending Buyer an invoice, and Buyer shall include such reimbursement in the next monthly invoice and remit payment thereof. Conversely, if Buyer is required by any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder; Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds or remittances associated with such Taxes shall be administered in accordance with Section 11.1.
- 12.4. **Documentation.** A Party, upon written request of the other Party, shall promptly provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from any Tax. Nothing herein shall obligate a Party to pay or be liable to pay any Taxes from which it is exempt pursuant to applicable law.

13. Force Majeure

- 13.1. **Definition.** "Force Majeure" means: (A) war, riots, floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, excessive winds, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (C) insurrection, rebellion, nationwide strikes; (D) an act of god or other such significant and material event or circumstance which prevents one Party from performing a material and significant obligations hereunder, which such event or circumstance was not anticipated as of the Effective Date, is not within the Commercially Reasonable control of, or the result of the negligence of such claiming Party, and which, by the exercise of Commercially Reasonable Efforts, the claiming Party is unable to overcome or avoid or cause to be avoided; and (E) delays in obtaining goods or services from any subcontractor or supplier to the extent caused by the occurrence of any of the events described in the immediately preceding subparts (A) through (D). The acts, events or conditions listed in subparts (A) through (E) above shall only be deemed a Force Majeure if and to the extent they actually and materially delay or prevent the performance of a Party's obligations under this Agreement and: (i) are beyond the reasonable control of the Party, (ii) are not the result of the willful misconduct or negligent act or omission of such Party (or any person over whom that Party has control), (iii) are not an act, event or condition that reasonably could have been anticipated, or the risk or consequence of which such Party has assumed under the Agreement; and, (iv) cannot be prevented, avoided, or otherwise overcome by the prompt exercise of Commercially Reasonable diligence by the Party (or any Person over whom that Party has control).

- 13.1.1. Notwithstanding anything to the contrary herein, Force Majeure will not include the following: (a) any strike or labor dispute of the employees of either Party or any subcontractor that is not part of a regional or nationwide strike or labor dispute; (b) any difficulty in obtaining or maintaining sufficient, or appropriately skilled, personnel to perform the work in accordance with the requirements of this Agreement; (c) normal wear and tear or obsolescence of any equipment; (d) Buyer's inability to economically use or resell the Product delivered and purchased hereunder; (e) Seller's ability to sell the Product (or any component of the Product) at a more advantageous price; (f) loss by Seller of any contractual arrangement; (g) any Regulatory Event; (h) loss or failure of Seller's supply of the Product or inability to generate the Product that is not caused by an

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

independent Force Majeure event; (i) the cost or availability or unavailability of fuel, solar energy, wind, or motive force, as applicable, to operate the Facility; (j) economic hardship, including, without limitation, lack of money or financing or Seller's inability to economically generate the Product or operate the Facility; (k) any breakdown or malfunction of Facility equipment (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure; (l) the imposition upon Seller of costs or taxes allocated to Seller hereunder or Seller's failure to obtain or qualify for any tax incentive, preference, or credit; (m) delay or failure of Seller to obtain or perform any Permit; (n) any delay, alleged breach of contract, or failure under any other agreement or arrangement between Seller and another entity, including without limitation, an agent or sub-contractor of Seller (except as a direct result of an event of Force Majeure defined in 14.1(E)); (o) Seller's failure to obtain, or perform under, the Interconnection Agreement, or its other contracts and obligations to Transmission Provider; or (p) increased cost of electricity, steel, materials, equipment, labor, or transportation.

- 13.2. Event. If either Party is rendered unable by Force Majeure to carry out, in whole or in part, any material obligation hereunder, such Party shall provide notice and reasonably full details of the event to the other Party as soon as reasonably practicable after becoming aware of the occurrence of the event (but in no event later than three (3) Business Days of the initial occurrence of the event of Force Majeure). Such notice may be given orally but shall be confirmed in writing as soon as practicable thereafter (and in any event within ten (10) days of the initial occurrence of the event of Force Majeure); provided however, a reasonable delay in providing such notice shall not preclude a Party from claiming Force Majeure but only so long as such delay does not prejudice or adversely affect the other Party.
- 13.3. Effect. Subject to the terms and conditions of Section 14, for so long as the event of Force Majeure is continuing, the specific obligations of the Party that are demonstrably and specifically adversely affected by the Force Majeure event, shall be suspended to the extent and for the duration made necessary by the Force Majeure and will not be deemed to be an Event of Default to the extent resulting therefrom. The burden of proof for demonstrating that an event of Force Majeure has occurred shall be on the Party claiming relief under this Agreement based on an event of Force Majeure.
- 13.4. Remedy. The Party claiming Force Majeure shall act in a Commercially Reasonable Manner to remedy the Force Majeure as soon as practicable and shall keep the other Party advised as to the continuance of the Force Majeure event. If a bona fide Force Majeure event persists for a continuous period of one hundred eighty (180) days, then the Party not claiming Force Majeure shall have the right, in its sole and unfettered discretion, to terminate this Agreement upon giving the other Party ten (10) Business Days advance written notice; provided, however, that where the Force Majeure event cannot be remedied within one hundred eighty (180) days and the claiming Party can demonstrate to the non-claiming Party its intention and ability to implement a Commercially Reasonable plan to remedy such Force Majeure event within an additional one hundred eighty (180) days after the initial one hundred eighty (180) day period and the claiming Party uses Commercially Reasonable efforts to implement such plan, the non-claiming Party shall not have the right to terminate the Agreement until the expiration of such additional one hundred eighty (180) day period.
- 13.5. Termination. Unless otherwise agreed upon by the Parties in writing and in each Party's sole discretion, upon the expiration of the periods set forth above in Sections 14.4, this Agreement may be terminated without any further notice and further opportunity to cure any non-performance. Upon termination becoming effective pursuant to a Force Majeure under Section 14, neither Party will have any liability to the other Party or recourse against the other Party, other than for amounts arising prior to termination. Notwithstanding the claimed existence of a Force Majeure event or any other provisions of this Agreement, nothing herein shall relieve any Party from exercising any right or remedy provided under this Agreement with respect to any liability or obligation of the other Party that is not excused or suspended by the Force Majeure event, including, without limitation, the right to liquidate and early terminate the Agreement for any Event of Default not excused by the Force Majeure event. Nothing herein shall be construed so as to obligate any Party to settle any strike, work stoppage or other

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

labor dispute or disturbance or to make significant capital expenditures, except in the sole discretion of the Party experiencing such difficulty.

14. Change in Law

14.1. Regulatory Event. A "Regulatory Event" means one or more of the following events:

14.1.1. Illegality. After the Effective Date, due to the adoption of, or change in, any applicable Requirements of Law or in the interpretation thereof by any Governmental Authority with competent jurisdiction, it becomes unlawful for a Party to perform any material obligation under this Agreement.

14.1.2. Adverse Government Action. After the Effective Date, there occurs any adverse material change in any applicable Requirements of Law (including material change regarding a Party's obligation to sell, deliver, purchase, or receive the Product) and any such occurrence renders illegal or unenforceable any material performance or requirement under this Agreement.

14.2. Process. Upon the occurrence of a Regulatory Event the Party affected by the Regulatory Event may notify the other Party in writing of the occurrence of a Regulatory Event, together with details and explanation supporting the occurrence of a Regulatory Event. Upon receipt of such notice, the Parties agree to undertake, during the thirty (30) days immediately following receipt of the notice, to negotiate such modifications to reform this Agreement to remedy the Regulatory Event and attempt to give effect to the original intention of the Parties. Upon the expiration of the 30-day period, if the Parties are unable to agree upon modifications to the Agreement that are acceptable to each Party, in each Party's reasonable discretion, then either Party shall have the right, in such Party's sole discretion, to terminate this Agreement with a 30-day advance written notice.

15. Confidentiality

15.1. Protected Information. Except as otherwise set forth in this Agreement, neither Party (the "Receiving Party") shall, without the other Party's (the "Disclosing Party") prior written consent, disclose any Protected Information (as defined below) of the Disclosing Party to any third person (other than the Party's employees, affiliates, advisors, counsel, accountants, and current and prospective lenders and investors in the Facility who have a need to know such information, have agreed to keep such terms confidential, and for whom the Party shall be liable in the event of a breach of such confidentiality obligation), at any time during the Term or for five (5) years after the expiration or early termination of this Agreement. As used herein the term "Protected Information" means (a) this Agreement, (b) any proprietary information of the Disclosing Party disclosed in connection with this Agreement, including without limitation, proposals and negotiations whether disclosed prior to or after the date hereof that have been clearly marked as confidential or proprietary. Notwithstanding anything to the contrary herein, in no event will Protected Information include the concept of constructing or providing energy from a power plant, using any specific fuel source, in any specific location. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief,) to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding any other provision of this Agreement, any claim related to or arising out of any confidentiality obligations herein may be brought directly in any state or federal court of competent jurisdiction in [Mecklenburg][Wake] County, North Carolina, in accordance with Section 26.5 of this Agreement, and shall not be subject to dispute resolution or arbitration pursuant to Section 23 of this Agreement.

15.2. Non-Confidential Information. Protected Information does not include information: (i) that is or becomes available to the public other than by disclosure of Receiving Party in breach of this Agreement; (ii) known to Receiving Party prior to its disclosure; (iii) available to Receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the Receiving Party without reliance upon the Protected Information. Notwithstanding anything to the contrary herein, in no event will Protected Information include the concept of constructing or providing energy from a power plant, using any specific fuel source, in any specific location.

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

- 15.3. Return of Confidential Information. Upon request of Disclosing Party, Receiving Party shall either (i) return the Protected Information, including all copies, or (ii) destroy the Protected Information, including all copies, and present written assurances of the destruction to Disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy Protected Information stored on Back-Up Tapes; provided, however, any Protected Information not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the Receiving Party may retain one (1) copy of such Protected Information in Receiving Party's files solely for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.
- 15.4. Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may disclose Protected Information to comply with PURPA, request of any Governmental Authority, applicable Requirements of Law, or any exchange, control area or System operator rule, in response to a court order, or in connection with any court or regulatory proceeding. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the Receiving Party agrees to give Disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Protected Information. Such notice by the Receiving Party shall give Disclosing Party an opportunity, at Disclosing Party's discretion and sole cost, to seek a protective order or similar relief, and the Receiving Party shall not oppose such request or relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of Receiving Party's notice, Receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of Receiving Party's legal counsel; provided, however, Receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Protected Information so disclosed.
- 15.5. Regulatory Disclosures by Buyer. This Section 16.5 will apply notwithstanding anything to the contrary in this Agreement. Seller understands and acknowledges that Buyer is regulated by various regulatory and market monitoring entities. Buyer is permitted, in its sole discretion, to disclose or to retain and not destroy (in case of a future disclosure need as determined by Buyer in its sole discretion) any information (including Protected Information) to any regulatory commission (inclusive of the NCUC, SCPSC, FERC), NERC, market monitor, office of regulatory staff, and/or public staff, or any other regulator or legislative body without providing prior notice to the Seller or having obtained the consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for any such disclosures or retentions in its sole discretion. In the event of the establishment of any docket or proceeding before any regulatory commission, public service commission, public utility commission, or other agency, tribunal, or court having jurisdiction over Buyer, the Protected Information shall automatically be governed solely by the rules and procedures governing such docket or proceeding to the extent such rules or procedures are additional to, different from, or inconsistent with this Agreement. In regulatory proceedings in all state and federal jurisdictions in which Buyer does business, Buyer will from time-to-time be required to produce Protected Information, and Buyer may do so without prior notice to Seller or consent from Seller, using Buyer's business judgment, and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. When a request for disclosure of information, including Protected Information, is made to Buyer, Buyer may disclose the information, including Protected Information, without prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. Seller further acknowledges that Buyer is required by law or regulation to report certain information that could embody Protected Information from time-to-time, and Buyer may from time-to-time make such reports, without providing prior notice to Seller or consent from Seller, using

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion.

- 15.6. Notwithstanding the foregoing, Buyer acknowledges that the Seller, by law, must comply with Chapter 132 of the North Carolina General Statutes and that records and/or information constituting public records and/or information under said law do not constitute Protected Information under this Agreement.

16. Mutual Representations and Warranties

- 16.1. As of the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:
- 16.1.1. It is duly organized, validly existing and in good standing under the Requirements of Law of the jurisdiction of its organization or formation and has all requisite power and authority to execute and enter into this Agreement;
 - 16.1.2. It has all authorizations under the Requirements of Law (including but not limited to the Required Approvals), necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;
 - 16.1.3. The execution, delivery, and performance of this Agreement will not conflict with or violate any Requirements of Law or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;
 - 16.1.4. This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Party in accordance with the terms and conditions of this Agreement;
 - 16.1.5. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the representations, advice or recommendations of the other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;
 - 16.1.6. No Event of Default or event which with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and that such Party 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;
 - 16.1.7. There is no pending, or to its knowledge, threatened legal proceeding at law or equity against it or any Affiliate, that materially adversely affects its ability to perform its obligations under this Agreement;
 - 16.1.8. It is a "forward contract merchant" and this Agreement constitutes a "forward contract" as such terms are defined in the United States Bankruptcy Code;
 - 16.1.9. It is an "eligible commercial entity" within the Commodity Exchange Act;
 - 16.1.10. It is an "eligible contract participant" within the Commodity Exchange Act; and;
 - 16.1.11. Each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and that such Party will be bound by such execution.

17. Seller Representations and Warranties to Buyer

- 17.1. For all Product and every aspect thereof, Seller represents, warrants, and reaffirms to Buyer as a continuing warranty and representation that:
- 17.1.1. All Product will meet the specifications and requirements in this Agreement, including

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

without limitation, compliance with PURPA;

- 17.1.2. Seller has provided and conveyed and will provide and convey to Buyer all Capacity rights associated with the Facility and Energy Produced by the Facility;
- 17.1.3. Seller holds all the rights to all the Product from the Facility, Seller has the right to sell the Product to Buyer, and Seller agrees to convey and does convey to Buyer all rights and good title to the Product free and clear of any Liens, encumbrances, or title defects;
- 17.1.4. Seller has not and will not double claim or double count the Product (including, without limitation, any Capacity of the Facility) in any manner (including, for example, by issuing a press release or otherwise claiming that Seller is creating any Capacity benefit, or selling the Product to any person other than exclusively to and for Buyer); and
- 17.1.5. Seller has not and will not in any manner interfere with, encumber or otherwise impede Buyer's use, transfer, and sale of the Product.

18. Events of Default

- 18.1. An "Event of Default" means with respect to the non-performing Party (such Party, the "Defaulting Party"), the occurrence of any one or more of the following events set forth below in this Section 19, each of which, individually, shall constitute a separate Event of Default:
- 18.2. The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after the Defaulting Party's receipt of written notice; *provided, however*, a Party will have two (2) Business Days to remedy any failure to make payment required under Section 21;
- 18.3. Any covenant or warranty made by Seller under Section 6.2 (Seller Covenant) is false or misleading in any respect when made or when deemed made or repeated.
- 18.4. Any representation or warranty made by a Party under Section 17 and elsewhere in this Agreement (except Section 18 which is a separate Event of Default) is false or misleading in any material respect when made or when deemed made or repeated;
- 18.5. Any representation or warranty made by Seller under Section 18 (Seller Representations and Warranties to Buyer) is false or misleading in any respect when made or when deemed made or repeated;
- 18.6. The actual Nameplate Capacity Rating of the Facility is higher than the Nameplate Capacity Rating set forth in Exhibit 3, or is lower than the Nameplate Capacity Rating by more than five (5) percent of the Nameplate Capacity Rating set forth in Exhibit 3.
- 18.7. Seller Abandons the Facility for more than sixty (60) consecutive days;
- 18.8. Seller adds an energy storage device to the Facility without obtaining Buyer's prior written consent.
- 18.9. Seller fails to fully meet all the insurance requirements set forth in Section 7.5, and such failure is not cured within five (5) Business Days.
- 18.10. Seller fails to obtain or maintain the Facility's registration or certification as a Qualifying Facility under PURPA.
- 18.11. Seller fails to fully comply with the PURPA Fuel Requirements.
- 18.12. Seller delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by the Facility.
- 18.13. Seller fails to promptly and fully comply with a System Operator Instruction.
- 18.14. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and: (i) at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

- assume all the obligations of Seller 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 (ii) the resulting, surviving, transferee or successor entity fails to assume all the obligations of Seller 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;
- 18.15. An assignment by or Change of Control with respect to Seller, other than in compliance with Section 24;
 - 18.16. A Party becomes Bankrupt;
 - 18.17. Seller transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement; and
 - 18.18. Except to the extent constituting a separate Event of Default (in which case the provisions applicable to that separate Event of Default shall apply) the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within thirty (30) days after the Defaulting Party's receipt of written notice.

19. Early Termination.

- 19.1. Early Termination Date. If an Event of Default with respect to a Defaulting Party has occurred and is continuing, then the other Party (such Party, the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective) as an early termination date to accelerate all amounts owing between the Parties, liquidate, net, recoup, set-off, and early terminate this Agreement and any other agreement between the Parties (such day, the "Early Termination Date").
- 19.2. Effectiveness of Default and Remedies. Where an Event of Default is specified herein and is governed by a system of law which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement an Event of Default and Early Termination Date shall be deemed to have occurred immediately upon any such event and no prior written notice shall be required. All of the remedies and provisions set forth in this section shall be without prejudice to any other right of the Non-Defaulting Party to accelerate amounts owed, net, recoup, setoff, liquidate, and early terminate this Agreement.
- 19.3. Net Settlement Amount. If the Non-Defaulting Party establishes an Early Termination Date, then the Non-Defaulting Party shall calculate its Gains or Losses and Costs resulting from the termination as of the Early Termination Date, in a Commercially Reasonable Manner. The Non-Defaulting Party shall aggregate such Gains or Losses and Costs with respect to the liquidation of the termination and any other amounts due under this Agreement and any other agreement between the Parties into a single net amount expressed in U.S. dollars (the "Net Settlement Amount"). The Non-Defaulting Party shall then notify the Defaulting Party of the Net Settlement Amount. The Defaulting Party shall pay the Non-Defaulting Party the full amount of the Net Settlement Amount within five (5) Business Days of delivery to the Defaulting Party of the notice of the Net Settlement Amount that the Defaulting Party is liable for.
- 19.4. Payment. Any Net Settlement Amount will only be due and payable only to the Non-Defaulting Party from and by the Defaulting Party. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Net Settlement Amount will be deemed to be zero and no payment will be due or payable. The Non-Defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the Defaulting Party for economic benefits accruing to the Non-Defaulting Party as a result of the Defaulting Party's default. The Non-Defaulting Party shall be entitled to recover any Net Settlement Amount by netting or set-off or to otherwise pursue recovery of damages. Additionally, Buyer will be entitled to recover any Net Settlement Amount by

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

drawing upon any Performance Assurance or by netting or set-off, or to otherwise pursue recovery of damages. Any calculation and payment of the Net Settlement Amount will be independent of and in addition to Seller's obligation to reimburse Buyer for overpayments pursuant to Section 20.6.

19.5. Overpayment Reimbursement. Notwithstanding anything else in this Agreement to the contrary, including without limitation the Net Settlement Amount calculation and payment provisions set forth in Sections 20.1 through 20.4, and without limiting any of Buyer's other rights or remedies hereunder, Seller agrees and acknowledges that in the event this Agreement is terminated prior to the expiration of the Term for any reason other than an Event of Default by Buyer, that Seller will reimburse Buyer for all amounts paid by Buyer to Seller under this Agreement in excess of Buyer's avoided cost for energy and capacity over the period starting from the commencement of the Delivery Period through the date of termination of this Agreement plus interest on such amount calculated at the rate of 2.5% to be adjusted annually until repaid (the "Overpayment Amount"). Seller agrees to reimburse Buyer for the Overpayment Amount notwithstanding anything to the contrary in this Agreement and without regard to whether Seller is or may be liable to Buyer for any additional amounts under this Agreement, including, without limitation, any Net Settlement Amount, Gains, and/or Losses determined or to be determined pursuant to this Agreement. The Seller will pay Buyer the Overpayment Amount no later than three (3) Business Days after the Early Termination Date.

19.6. Survival. This Section 20 will survive any expiration or termination of this Agreement.

20. Cover Costs.

20.1. Exclusive Remedies. Except where a specific and exclusive remedy is otherwise set forth in this Agreement, the remedies set forth in this Section shall be a Party's exclusive remedies prior to termination for the other Party's failure to deliver the Product or to receive the Product pursuant to and in accordance with this Agreement.

20.2. Seller's Failure to Deliver. If Seller fails to deliver Product that complies with the requirements set forth in this Agreement or fails to deliver all or part of the Contract Quantity (each will be deemed as a failure to deliver for purposes of calculating damages), and such failure is not excused by a Permitted Excuse to Perform or Buyer's failure to perform, then Buyer shall elect in its sole discretion: (i) to terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Buyer shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) to require Seller to pay Buyer within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Seller failed to deliver to Buyer multiplied by two (2) times the per unit Contract Price (or component thereof).

20.3. Buyer's Failure to Accept Delivery. If Buyer fails to receive all or part of the Contract Quantity that Seller attempted to deliver to Buyer in accordance with this Agreement, and such failure by Buyer is not excused by a Permitted Excuse to Perform or Seller's failure to perform, then Seller shall elect in its sole discretion either to: (i) terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Seller shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) require Buyer to pay Seller within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Buyer failed to receive multiplied by two (2) times the per unit Contract Price (or component thereof).

20.4. Event of Default. Any failure by Seller to pay amounts due under this Section 21 will be an Event of Default under Section 19.2.

20.5. Survival. This Section 21 will survive any expiration or termination of this Agreement.

21. Limitation of Liabilities & Liquidated Damages.

21.1. Reasonableness. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES, INCLUDING WITHOUT LIMITATION DETERMINATION OF LIQUIDATED DAMAGES, COVER COSTS, AND

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

NET SETTLEMENT AMOUNT DAMAGES PROVIDED FOR IN THIS AGREEMENT (i) ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH THE EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, AND (ii) UNLESS OTHERWISE STATED IN SUCH PROVISIONS, 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 PROVISIONS, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY PROVISION OF THIS AGREEMENT PROVIDES FOR, OR IS DEEMED TO CONSTITUTE OR INCLUDE, LIQUIDATED DAMAGES, THE PARTIES STIPULATE AND AGREE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO ESTIMATE OR DETERMINE, THE LIQUIDATED AMOUNTS ARE A REASONABLE APPROXIMATION OF AND METHODOLOGY TO DETERMINE THE ANTICIPATED HARM OR LOSS TO THE PARTY, AND OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT. THE PARTIES FURTHER STIPULATE AND AGREE THAT ANY PROVISIONS FOR LIQUIDATED DAMAGES ARE NOT INTENDED AS, AND SHALL NOT BE DEEMED TO CONSTITUTE, A PENALTY, AND EACH PARTY HEREBY WAIVES THE RIGHT TO CONTEST SUCH PROVISIONS AS AN UNREASONABLE PENALTY OR AS UNENFORCEABLE FOR ANY REASON.

- 21.2. Limitation. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, (i) THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; AND (ii) NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, ANY TORT, CONTRACT, OR OTHERWISE.
- 21.3. Damages Stipulation. Each Party expressly agrees and stipulates that the terms, conditions, and payment obligations set forth in Sections 20 and 21 are a reasonable methodology to approximate or determine harm or loss, each Party acknowledges the difficulty of determining actual damages or loss, and each Party hereby waives the right to contest such damages and payments as unenforceable, as an unreasonable penalty, or otherwise for any reason. The Parties further acknowledge and agree that damages and payments determined under Sections 20 and 21 are direct damages, will be deemed to be a direct loss, and will not be excluded from liability or recovery under the Limitations of Liabilities provisions of this Section 22.
- 21.4. Survival. This Section 22 will survive any expiration or termination of this Agreement.

22. Disputes

- 22.1. Resolution by the Parties. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Dispute(s)") promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. A Party may give the other Party written notice of a Dispute that has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within ten (10) Business Days after delivery of the notice, the receiving Party shall respond with (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within twenty (20) Business Days after delivery of the initial notice, the executives of both Parties shall meet at Buyer's offices, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. At the request of either Party, the Parties shall enter into a confidentiality agreement to cover any Dispute and discussions related thereto.
- 22.2. Should Dispute arise between the Parties that cannot be resolved amicably pursuant to this Section, either Party shall be free to pursue an action to enforce or interpret its terms in any

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

state or federal court of competent jurisdiction located in North Carolina.

22.3. Survival. This Section 23 will survive any expiration or termination of this Agreement.

23. Assignment

- 23.1. Limitation. Except as set forth below in Section 24.2 with respect to pledging as collateral security, Seller shall not assign or encumber (collectively, the "Assignment") this Agreement, any rights or obligations under the Agreement, or any portion hereunder, without Buyer's prior written consent. Seller shall give Buyer at least thirty (30) days prior written notice of any requested Assignment. Subject to Seller providing Buyer with information demonstrating to Buyer, in Buyer's Commercially Reasonable Discretion, that Seller's proposed assignee has the technical, engineering, financial, and operational capabilities to perform under this Agreement, Buyer may not unreasonably withhold its consent; *provided, however*, that any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall deliver to Buyer Performance Assurance in the amount required under this Agreement, and such enforceability assurance as the Buyer may request in its Commercially Reasonable discretion. Notwithstanding anything to the contrary herein, Buyer may pledge, encumber, or assign this Agreement without the consent of Seller to any Person that is Creditworthy, or that has provided Seller with a guaranty substantially in the form of Exhibit 5 from a Creditworthy credit support provider guaranteeing the assignee's obligations hereunder, and that has agreed in writing to assume the obligations of Buyer hereunder.
- 23.2. Pledge. Seller may, without prior consent of Buyer but with no less than ten (10) Business Days prior written notice to Buyer, pledge as collateral security this Agreement to a financing party in connection with any loan, lease, or other debt or equity financing arrangement for the Facility. Any pledge of this Agreement as collateral security will not relieve Seller of any obligation or liability under this Agreement or compromise, modify or affect any rights, benefits or risks of Buyer under this Agreement, and it will not create any rights, including any third party beneficiary rights, for any Person under this Agreement.
- 23.3. Acknowledgement of Non-Default. Provided that Seller is not in default of its obligations under this Agreement, upon reasonable request by Seller, Buyer will execute a written acknowledgement of non-default in the form of Exhibit 7 attached hereto (the "Acknowledgement") which shall be based on the actual knowledge of Buyer's personnel responsible for administering the Agreement at the time of the execution of the Acknowledgement and after due inquiry of Buyer's internal records only. Notwithstanding any provision to the contrary set forth in the Acknowledgement, Buyer reserves all rights and defenses available to it under the Agreement, and nothing stated therein shall be deemed to have waived, amended or modified any such rights or defenses. In no event shall the issuance of any Acknowledgement introduce any third party to this Agreement or create any rights, including third party beneficiary rights for any Person under this Agreement.
- 23.4. Change of Control. Any Change of Control of Seller (however this Change of Control occurs) shall require the prior written consent of Buyer, which shall not be unreasonably withheld or delayed. Seller shall give Buyer at least thirty (30) days prior written notice of any such requested consent to a Change of Control.
- 23.5. Delivery of Assurances & Voidable. Any Assignment or Change of Control will not relieve Seller of its obligations hereunder, unless Buyer agrees in writing in advance to waive the Seller's continuing obligations under this Agreement. In case of a permitted Assignment, such requesting party or parties shall agree in writing to assume all obligations of Seller and to be bound by the terms and conditions of this Agreement and shall deliver to Buyer such tax, credit, performance, and enforceability assurances as Buyer may request, in its Commercially Reasonable discretion. Further, Buyer's consent to any Assignment may be conditioned on and subject to Seller's proposed assignee having first obtained all approvals that may be required by any Requirements of Law and from all applicable Governmental Authorities. Any sale, transfer, Change of Control, and/or Assignment of any interest in the Facility or in the Agreement made without fully satisfying the requirements of this Agreement shall be null and void and will be an Event of Default hereunder with Seller as

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

the Defaulting Party.

- 23.6. Cost Recovery. Without limiting Buyer's rights under this Section 24, to the extent Buyer agrees to a request from Seller for one or more consent(s) to an Assignment or Change of Control under this Agreement, Seller shall pay Buyer ten thousand dollars (\$10,000) prior to Buyer processing Seller's request.

24. Notices

- 24.1. Process. All notices, requests, or invoices shall be in writing and shall be sent to the address of the applicable Party as specified on the first page of this Agreement. A Party may change its information for receiving notices by sending written notice to the other Party. Notices shall be delivered by hand, certified mail (postage prepaid and return receipt requested), or sent by overnight mail or courier. This section shall be applicable whenever words such as "notify," "submit," "give," or similar language are used in the context of giving notice to a Party.
- 24.2. Receipt of Notices. Hand delivered notices shall be deemed delivered by the close of the Business Day on which it was hand delivered. Notices provided by certified mail (postage prepaid and return receipt requested), mail delivery or courier service, or by overnight mail or courier service will be deemed received on the date of delivery recorded by the delivery service or on the tracking receipt, as applicable. Notwithstanding anything to the contrary, if the day on which any notice is delivered or received is not a Business Day or is after 5:00 p.m. EPT on a Business Day, then it shall be deemed to have been received on the next following Business Day.

25. Miscellaneous

- 25.1. Costs. Each Party shall be responsible for its own costs and fees associated with negotiating or disputing or taking any other action with respect to this Agreement, including, without limitation, attorney costs.
- 25.2. Access. Upon reasonable prior notice, Seller shall provide to Buyer and its authorized agents (including contractors and sub-contractors), employees, auditors, and inspectors reasonable access to the Facility to: (i) tour or otherwise view the Facility; (ii) ascertain the status of the Facility with respect to construction, start-up and testing, or any other obligation of Seller under this Agreement; and, (iii) read meters and perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement or to otherwise audit and/or verify Seller's performance under this Agreement. Upon reasonable prior notice, Seller shall provide to Buyer and its guests or customers reasonable access to the Facility to only tour or otherwise view the Facility. While at the Facility, the foregoing agents, employees, auditors, inspectors, guests, and customer shall observe such reasonable safety precautions as may be required by Seller, conduct themselves in a manner that will not interfere with the operation of the Facility, and adhere to Seller's reasonable rules and procedures applicable to Facility visitors. Seller shall have the right to have a representative of Seller present during such access.
- 25.3. Safe Harbor and Waiver of Section 366. Each Party agrees that it will not assert, and waives any right to assert, that the other Party is performing hereunder as a "utility," as such term is used in 11 U.S.C. Section 366. Further, each Party hereby waives any right to assert and agrees that it will not assert that 11 U.S.C. Section 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding each Party further waives the right to assert and agrees that it will not assert that the other Party is a provider of last resort with respect to this Agreement or any transaction hereunder or to otherwise limit contractual rights to accelerate amounts owed, net, recoup, set-off, liquidate, and/or early terminate. Without limiting the generality of the foregoing or the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including, without limitation, judgment lien creditors, receivers, estates in possession, and trustees thereof.
- 25.4. 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 NORTH CAROLINA, WITHOUT REGARD

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.

- 25.5. Limitation of Duty to Buy. If this Agreement is terminated due to a default by Seller, neither Seller, nor any affiliate and/or successor of Seller, nor any affiliate and/or successor to the Facility, including without limitation owner and/or operator of the Facility will require or seek to require Buyer to purchase any output (Energy or otherwise) from the Facility under any Requirements of Law (including without limitation PURPA) or otherwise for any period that would have been covered by the Term of this Agreement had this Agreement remained in effect at a price that exceeds the Contract Price. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, and on behalf of any successor to the Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentence, and hereby waives its right to dispute the above sentence. Seller authorizes the Buyer to record notice of the foregoing in the real estate records.
- 25.6. Entire Agreement and Amendments. This Agreement represents the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral. No amendment, modification, or change to this Agreement shall be enforceable unless agreed upon in a writing that is executed by the Parties.
- 25.7. Drafting. Each Party agrees that it (and/or its counsel) has completely read, fully understands, and voluntarily accepts every provision, term, and condition of this Agreement. Each Party agrees that this Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, or proposing any provision hereof, or execution of this Agreement. Each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.
- 25.8. Headings. All section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 25.9. Publicity.
- 25.9.1. Limitation on the Parties. Neither Party shall make any use of the other Party's name, logo, likeness in any publication, promotional material, news release, or similar issuance or material without the other Party's prior review, approval, and written consent. Seller agrees and acknowledges that any reference or likeness to "Duke" shall be a prohibited use of Buyer's name, logo, likeness. Seller agrees and acknowledges that any direct or indirect implication of any endorsement, partnership, support, or testimonial of Seller by Buyer is prohibited, and any such use, endorsement, partnership, support, and/or testimonial will be an Event of Default under this Agreement. Subject to the foregoing, either Party may disclose to the public general information in connection with the Party's respective business activities; *provided, however*, no such disclosure or publicity by Seller will directly or indirectly imply any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 25.10. Waiver. No waiver by any Party of any of its rights with respect to the other Party or with respect to any matter or default arising in connection with this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver under this Agreement will be effective only if it is in writing that has been duly executed by an authorized representative of the waiving Party.
- 25.11. Partnership and Beneficiaries. Nothing contained in this Agreement shall be construed or constitute any Party as the employee, agent, partner, joint venture, or contractor of any other Party. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns. No other person or entity, including, without limitation, a financing or collateral support provider, will be a direct or indirect beneficiary of or under this Agreement, and will not have any direct or indirect cause of action or claim under or in connection with this Agreement.

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

- 25.12. Severability. Any provision or section hereof that is declared or rendered unlawful by any applicable court of law, or deemed unlawful because of a statutory change, shall not, to the extent practicable, affect other lawful obligations under this Agreement.
- 25.13. Counterparts. This Agreement may be executed in counterparts, including facsimiles hereof, and each such executed document will be deemed to be an original document and together will complete execution and effectiveness of this Agreement.

[Remainder of page intentionally left blank. Signature page follows.]

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

DUKE ENERGY PROGRESS, LLC

BY: _____

NAME: _____

TITLE: _____

DATE: _____

BUNCOMBE COUNTY, NORTH CAROLINA

BY: _____

NAME: _____

TITLE: _____

DATE: _____

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

Exhibit 1

Estimated Monthly Energy Production of the Facility

<u>Month</u>	<u>Estimated Facility Energy Production (MWh)</u>
January	<u>685</u>
February	<u>685</u>
March	<u>685</u>
April	<u>685</u>
May	<u>685</u>
June	<u>685</u>
July	<u>685</u>
August	<u>685</u>
September	<u>685</u>
October	<u>685</u>
November	<u>685</u>
December	<u>685</u>
Total	<u>8220</u>

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

Exhibit 2
Contract Price
3 Year Term

CAPACITY PRICING			ENERGY PRICING								
Summer Months PM	Winter Months AM	Winter Months PM	Summer Prem Pk	Summer On-Peak	Summer Off-Peak	Winter Prem Pk	Winter On-Peak AM	Winter On-Peak PM	Winter Off-Peak	Shoulder On-Peak AM/PM	Shoulder Off-Peak
\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh	\$/MWh
\$ -	\$ -	\$ -	\$ 39.32	\$ 36.05	\$ 31.97	\$ 50.95	\$ 36.60	\$ 39.60	\$ 33.15	\$ 32.58	\$ 28.60
\$ -	\$ -	\$ -	\$ 39.32	\$ 36.05	\$ 31.97	\$ 50.95	\$ 36.60	\$ 39.60	\$ 33.15	\$ 32.58	\$ 28.60
\$ -	\$ -	\$ -	\$ 39.32	\$ 36.05	\$ 31.97	\$ 50.95	\$ 36.60	\$ 39.60	\$ 33.15	\$ 32.58	\$ 28.60

For Energy Credit purposes, Summer months are defined as calendar months June through September, Winter months are defined as calendar months December through February, and Shoulder months are defined as March through May and October through November. Summer on-peak hours shall be Monday through Friday from 1:00 p.m. to 4:00 p.m. and 8:00 p.m. to 9:00 p.m. Winter on-peak hours shall be Monday through Friday with morning hours from 4:00 a.m. to 6:00 a.m. and 9:00 a.m. to 11:00 a.m., plus evening hours from 6:00 p.m. to 10:00 p.m. Shoulder on-peak hours shall be Monday through Friday with morning hours from 5:00 a.m. to 10:00 a.m. plus evening hours from 5:00 p.m. to 11:00 p.m. Summer premium peak hours shall be Monday through Friday from 4:00 p.m. to 8:00 p.m. Winter premium peak hours shall be Monday through Friday from 6:00 a.m. to 9:00 a.m. There are no premium peak hours for Shoulder months. All other hours, plus the following holidays, shall be off-peak: New Year’s Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day. When a holiday falls on a Saturday, the Friday before the holiday will be considered off-peak; when the holiday falls on a Sunday, the following Monday will be considered off-peak

Capacity Credit shall only be applicable in Summer months defined as the calendar months of July and August and Winter months defined as calendar months of December through March. Summer on-peak hours shall be 4:00 p.m. to 8:00 p.m. during all Summer days. During Winter months, the morning on[1]peak hours shall be all Winter days from 6:00 a.m. to 9:00 a.m. and evening on-peak hours shall be all Winter days from 6:00 p.m. to 9:00 p.m. Capacity credits are not applicable in all other months.

**EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021**

Exhibit 3

Facility Information

1. Facility Name: Buncombe County Landfill
2. Facility Address: 81Panther Branch Rd. Alexander NC, 28701
3. Description of Facility (include number, manufacturer and model of Facility generating units, and layout): [to be provided by Seller] Single internal combustion genset Jenbacher model 420 s/n 1234747
4. Nameplate Capacity Rating (MW):1426KW
5. DC/AC Ratio: N/A
6. Fuel Type/Generation Type: Landfill gas / 480v 3 phase

UPON EXECUTION OF THE AGREEMENT TO WHICH THIS EXHIBIT IS ATTACHED, ANY MATERIAL MODIFICATION TO THE FACILITY SHALL REQUIRE BUYER'S PRIOR APPROVAL, AND SHALL BE MEMORIALIZED IN WRITING IN AN AMENDMENT TO THE AGREEMENT.

EXECUTION COPY
ALL TERMS, CONDITIONS, AND RATES DEEMED WITHDRAWN ON NOVEMBER 21, 2021

Exhibit 4

Expected Annual Output

Year	MWh
1-3	8220