

STATE OF GEORGIA  
COUNTY OF BARTOW

**ELECTRICAL INTERCONNECTION AND POWER EXCHANGE AGREEMENT**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **BEAUFLO USA, LLC**, hereinafter referred to as the "Owner" and the **CITY OF CARTERSVILLE**, a Georgia municipal corporation, hereinafter referred to as the "City."

**WHEREAS**, the Owner desires to interconnect an eligible distributed generation system to operate in parallel to the City's electric system for production of electric energy intended primarily to offset part or all of the Owner's requirement for electricity; and,

**WHEREAS**, the City is or will be the electric supplier of the Owner's premises; and,

**WHEREAS**, the Owner's eligible distributed generation system will be installed at the Owner's premises located at 1 Beauflor Way, White, GA 30184; and,

**WHEREAS**, the Owner's eligible distributed generation system is defined by the State of Georgia as a "Renewable Energy Source" such that energy supplied is from a technology approved in the Georgia Green Pricing Accreditation Program; and,

**WHEREAS**, the Owner has entered into a Solar Energy Procurement Agreement with Cherry Street Energy dated December 19, 2024 attached hereto and incorporated herein as Exhibit "E;" and

**WHEREAS**, Cherry Street Energy is the Solar Financing Agent for Owner and is so referred to herein; and

**WHEREAS**, the Owner understands the City is not obligated to permit interconnection to or purchase power from distributed generation systems with a peak generating capacity exceeding ten (10) kW per residential installation and not more than one hundred twenty-five (125) percent of actual or expected maximum annual peak demand of the premises for commercial applications.

**NOW THEREFORE**, for and in consideration of ten (\$10.00) dollars and other good and valuable consideration, the parties agree as follows:

**1. Scope and Purpose.**

This Agreement describes the conditions under which the City and the Owner agree that the distributed generating facility or facilities may be interconnected to and operated in parallel with the City's electric system and power exchange arrangements. Other services the Owner may require from the City are covered under separate agreements.

The following exhibits are incorporated and made a part of this Agreement:

- Exhibit A: Owner's Application for Interconnection of Distributed Generation Facility describing in detail the Owner's distributed generation facility, hereinafter referred to as the "System;"
- Exhibit B: City's Authorization or Non-Authorization to connect;
- Exhibit C: City's Distributed Generation Energy Rider;
- Exhibit D: City's Notice of Power Exchange Amount; and
- Exhibit E: Solar Energy Procurement Agreement.

## **2. Term and Termination**

**2.1** The term of this Agreement begins on the date first set forth above (regardless of the date that the Owner is authorized to interconnect the System pursuant to Section 5 below) and continues until December 31 of the same year then continues for ten (10) successive 1-year terms from January 1 to December 31 unless terminated prior by either party pursuant to the provisions of this Agreement.

**2.2** Either party may terminate this Agreement at any time by providing 90 days written notice to the other party. In the event of a sale of the Owner's premises, then this Agreement will terminate upon that sale.

**2.3** The City may terminate this Agreement at any time for violation of this Agreement upon written notice to the Owner.

**2.4** At the time of termination of this Agreement for any reason, the City reserves the right, but not the obligation, to perform lock out procedures to disconnect the Owner's System from the City's electric system.

## **3. Summary and Description of Owner's System**

**3.1** The Owner's System is a self-contained electric generation system including direct current disconnect apparatus, if applicable, alternating current disconnect/lockout, over-current protective device, and all related electrical equipment upstream of the over-current protective device, as set forth on Exhibit A. The System begins and continues upstream towards the distributed generation from the overcurrent protective device on the Owner's premises. However, the meter socket(s) and related electrical connects are part of the System and are the responsibility of the Owner. The meter(s) is (are) City equipment.

**3.2** The type of Distributed Generation equipment is: Photovoltaic.

**3.3** Capacity of the Distributed Generation equipment is: 1,040 kW.

**3.4** The expected annual energy production of the Distributed Generation equipment is: 1,420,307 kWh.

3.5 The expected date of initial operation of the Distributed Generation equipment is: 5/16/2025.

3.6 It is Owner's responsibility to ensure that its Solar Financing Agent's system is compatible with the City of Cartersville's requirements.

3.7 It is understood that if such system is not compatible or otherwise creates connection or interruption of services to Owner or City, the City may discontinue the connection and/or service immediately or in the alternative case, discontinue the connection until such time as Owner's Solar Financing Agent is in compliance.

3.8 It is agreed to by the parties hereto that the City's obligations and requirements in this Agreement are only to the Owner and not its Solar Financing Agent.

3.9 For purpose of this Agreement, Owner's Solar Financing Agent's equipment is considered to be Owner's by the City.

#### **4. Installation and Permitting**

4.1 The Owner and the System must comply with all applicable National Electric Code (NEC), UL and IEEE requirements, including, but not limited to:

UL 17 41-Standard for Static Inverters and Charge Controllers for Use with Photovoltaic Systems.

IEEE Standard 1547 (2003): Standard for Interconnecting Distributed Resources with Electric Power Systems.

Other organizations, such as the Canadian Standards Association (CSA), test to UL 1741. If the inverter is tested by an organization other than Underwriters Laboratories, the test data must be submitted to the City.

The Owner at the Owner's expense must: 1) obtain all necessary electrical permits for installation of the System and 2) obtain and maintain any government authorizations or permits required for the operation of the System. The Owner must reimburse the City for any and all losses, damages, claims, penalties, or liability the City incurs as a result of Owner's failure to obtain or to maintain any governmental Authorizations and permits required for construction and operation of the Owner's System.

4.2 The Owner or its contractor must construct the System as specified in Exhibit A.

4.3 The Owner must provide a manual, lockable, load-break disconnect switch that provides a "visible air gap" adjacent to the point of connection to the City's electric system to provide a point of electrical separation between the Owner's System and the City's electric system. The City will approve the location of the disconnect switch. The disconnect switch must be easily visible, mounted separately from the metering equipment,

readily accessible to the City personnel at all times, permanently labeled "GENERATION DISCONNECT," capable of interrupting the maximum available fault current of System, and capable of being locked in the open position with the City's lock. The City may open the disconnect switch thereby isolating the Owner's System from the City electric system for any reason that the City deems necessary including, but not limited to, maintenance or emergency work, the System adversely affecting other customers of the City, failure of the System to comply with codes/regulations, the System creating hazardous or unsafe conditions, the Owner's failure to pay utility bills when due, and failure to comply with the UL Standards in Section 4.1 above.

The Owner understands the City may accept, but is not obligated to accept, renewable energy credits from the Owner. If Owner anticipates transferring renewable energy credits to the City, the Owner must provide an approved meterbase installed adjacent to the disconnect switch mentioned above suitable for a City meter. City shall own this meter, known as the production meter.

**4.4 The System must meet the following power quality requirements:**

**4.4.1. Voltage** - the System must operate within 88 to 110% of nominal voltage. Response to voltages outside this range shall be as follows:

Voltage

$V < 50\%$

$50\% \leq V < 88\%$

$88\% \leq V \leq 110\%$

$110\% < V \leq 120\%$

$V > 120\%$

Maximum Trip Time

10 cycles

120 cycles

normal operation

60 cycles

10 cycles

**4.4.2 Flicker** - The System shall not create objectionable flicker for other City customers. Flicker is considered objectionable when it either causes a modulation of the light level of lamps sufficient to be irritating to humans or causes equipment malfunction.

**4.4.3 Frequency** - The System must have a frequency range of 59.3 to 60.5 Hz. When the interconnected system frequency is outside this range, the System shall trip within 10 cycles.

**4.4.4 Waveform Distortion (Harmonics)** - The System must have low current-distortion levels to ensure that no adverse effects are caused to other equipment connected to the City's electric system. When the System is serving

balanced linear loads, harmonic current injection into the City's network shall not exceed the following:

Odd harmonics (h):

$h < 11$ : 4.0%

$11 \leq h < 17$ : 2.0%

$17 \leq h < 23$ : 1.5%

$23 \leq h < 35$ : 0.6%

$35 \leq h$ : 0.3%

Maximum Total Demand Distortion (TDD) 5.0%

Even harmonics: Even harmonics are to be limited to 25% of the odd harmonics shown above.

**4.4.5 Power Factor** - The System must operate at a power factor  $>0.85$  (leading or lagging) when output is greater than 10% of full load.

**4.4.6 Islanding Protection** - The System must cease to energize the utility line when the inverter is subjected to islanding conditions. The System must immediately, completely, and automatically disconnect from the City's electric system in the event of a fault on the Owner's System or loss of source on the City's electric system. The City, at its own discretion and expense, may conduct periodic testing of anti-islanding. Anti-islanding is a means by which the Owner's System will cease to generate when it is still connected to the isolated (due to fault clearing or other switching) section of the City's electric system.

**4.4.7 Isolation Transformer** - The City may require a dedicated power transformer between the System and City-owned equipment in order to minimize adverse effects on other City customers.

**4.5** The Owner's over-current protective device (Breaker) at the service panel must be dedicated and must be capable of interrupting the maximum available fault current. The Breaker shall be clearly marked to indicate power source and connection to the City's electric system.

**4.6** The Owner, at the Owner's expense, must pay for any additional equipment required to connect the System to the City's electric system.

## **5. Written Authorization for Connection**

The Owner may not connect the System to the City's electric system until: 1) this Agreement has been fully executed by the parties; 2) the System has been tested; 3) written authorization to connect the System, in a form substantially similar to Attachment B, has been given to the Owner by the City. The City may have representatives present at the initial testing of the Owner's System and may perform (at its own expense) whatever testing of the Owner's System

that the City deems necessary; and 4) written permission has been received from the Solar Financing Agent and they have acknowledged this Agreement in writing.

After written authorization to connect the System to the City's electric system has been given, the Owner shall make no changes or modifications in the System or of its mode of operation without the prior written approval of the City.

## **6. Warranty**

The City's inspection and approval, if any, of the System is solely for the City's benefit and does not constitute a warranty, express or implied, as to the adequacy, safety, or other characteristics of any structures, equipment, wires, appliances or devices owned, installed or maintained by the Owner or leased by the Owner from third parties, including without limitation the System and any structures, wires, appliances or devices appurtenant thereto.

## **7. Indemnity and Liability**

**7.1** The Owner releases and agrees to indemnify, defend and hold harmless the City, its agents, officers, employees and volunteers from and against all damages, claims, actions, causes of action, demands, judgments, costs, expenses of every kind and nature, predicated upon injury to or death of any person or loss of or damage to any property, arising, in any manner, from the Owner's activities, actions or omissions under this Agreement. The Owner must provide a similar release from its Solar Financing Agent to the City.

**7.2** Nothing in this Agreement shall be construed as a waiver by the City of any rights, immunities, privileges, monetary limitations to judgments, and defenses available to the City under law.

**7.3** The Owner agrees to indemnify and hold harmless the City from any and all loss of assets, injury, or death that may arise or be caused by the Solar Financing Agent.

## **8. Location of System**

The System will be installed in the physical location specified or depicted in Exhibit A. The Owner cannot relocate and connect the System at another premises or physical location without filing a new interconnection application with the City or requesting modifications to this Agreement allowing for connection at the alternate location. In the event that such approval is given, any relocation and installation of the System will be at the Owner's sole expense.

## **9. Access to Premises**

The Owner will provide the City access to the Owner's premises to (i) inspect the Owner's System, (ii) to read and to replace meters, (iii) to open the load-break disconnect switch, and (iv) to disconnect the interconnection facilities at the City's meter or transformer.

#### **10. Maintenance of System**

The Owner, at the Owner's sole cost and expense, will maintain the System including, but not limited to, all over-current protective equipment, in a safe and prudent manner and in conformance with all applicable laws, codes and regulation, including, but not limited to, the requirements of Section 4 above. The Owner must retain all records for such maintenance. These records must be available to the City for inspection at all reasonable times.

#### **11. Safety**

The Owner agrees to install, operate and maintain the System in a safe and prudent manner and in conformance with all applicable laws, codes and regulations including, but not limited to, those contained in Section 4 above.

#### **12. Power Exchange Rate**

The rate at which electrical energy is purchased by the City from the System is described in the "Distributed Generation Energy Rider," attached as Exhibit C, or successor riders as may be approved by the City.

#### **13. Power Exchange Amount**

The maximum amount of electrical energy purchased by the City from the System is described in the "Notice of Power Exchange Amount," attached as Exhibit D, or successor notices as may be provided by the City.

For Systems exceeding peak generating capacity of ten (10) kW per residential installation or more than one hundred twenty-five (125) percent of actual or expected maximum annual peak demand of the premises for commercial applications, City may alter the amount of electricity purchased from System or cease purchasing electricity from System by providing ninety (90) days written notice to Owner in a form substantially similar to Attachment D.

#### **14. Power Exchange Obligations of City**

The City agrees to:

- a) Purchase excess electricity generated at the Owner's referenced premises, per the City's notice of power exchange amount.
- b) Install appropriate electrical metering that provides for flow of energy both into (from the City) and out of (to the City) the property, such metering to provide a reading of the energy used or supplied during any billing period.
- c) Install appropriate electrical metering (production meter) that provides for flow of energy from System, such metering to provide a reading of the total energy generated, if Owner elects to transfer Renewable Energy Credits.

d) Bill or make payment to the Owner for the electrical energy consumed or exchanged, per the City's distributed generation energy rider.

e) The City reserves the right to separate Owner's equipment from the City's lines and facilities if, in the exclusive opinion of the City, continued parallel operation is unsafe or may cause damage to persons or property. Upon such separation, the City shall promptly notify Owner so that any unsafe condition can be corrected.

#### **15. Power Exchange Obligations of Owner**

The Owner agrees and warrants:

a) That it has full power and authority to execute and deliver this Agreement and all documents contemplated hereunder, and to assure full performance and compliance, and has been granted said rights by its Solar Financing Agent and must provide an acknowledgment and agreement from their Solar Financing Agent prior to the City to allowing it to be connected to its system.

b) That the Owner will pay for the electrical power exchanged per the City's distributed generation energy rider set forth in Exhibit C or successor riders as may be approved by the City.

c) That the Owner shall supply the City with appropriate electrical interconnection plans, which must be designed to protect the safety of the City and the general public, and which must be pre-approved by the City. Included in these plans must be the requirement that the customer-owned interconnection equipment must disconnect from the City's electrical system upon the absence of City utility power.

d) That the Owner agrees to provide the City access to the metering equipment, and agrees to cooperate with the City for any special, temporary metering intended to monitor energy flows.

e) That the Owner agrees to pay for any incremental City metering or electrical distribution system costs necessitated by this Agreement.

f) That the Owner will provide, install, own and maintain such power exchange and interconnection equipment that provides for the safe interconnection to the City's system.

g) That the Owner's installed generation and interconnection equipment will operate safely at the time of installation and throughout the term of the Agreement.

h) That the Owner will notify the City of any changes to the Owner's system (size change, generation change, or change in interconnection equipment).

Technical information on any changes in Owner's equipment must be provided to the City and pre-approval received from the City prior to Owner connection and operation of such equipment.



**16. Compliance with Solar Power Free-Market Financing Act of 2015**

The requirements of O.C.G.A. § 46-3-63(b) and (c) must be specifically met by the Owner and its Solar Financing Agent.

**17. Assignment**

This Agreement may not be assigned by the Owner without the prior written consent of the City, which may be withheld in its sole discretion. In the event of a sale of the Owner's premises, then this Agreement will terminate upon that sale. If the new owner desires to continue receiving Service, the new owner must enter into a new, separate agreement with the City.

**18. Force Majeure**

Neither party will be liable for delays in performing its obligations to the extent that the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence, including but not limited to, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbances.

**19. Severability**

If any provision of this Agreement is found to be illegal or unenforceable, then the remaining provisions of this Agreement will remain in full force and effect, and such term or provision will be deemed stricken for as long as it remains illegal or unenforceable.

**20. Governing Law and Venue**

**20.1** Any tribunal enforcing this Agreement shall apply and construe it according to the laws of the State of Georgia.

**20.2** In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and jurisdiction for any litigation, arising there under will be in the Superior Court of Bartow County, Georgia, and, if necessary for exclusive federal questions, the United States District Court for the Northern District of Georgia, Rome Division. The Owner waives any objection to jurisdiction or venue of any action instituted pursuant to this section and may not assert any defense in any such action based on lack of jurisdiction or venue or based upon Forum Non Conveniens. The Owner waives any bond or surety or security upon such bond or surety which, but for this waiver, might be required by the City.

**21. Survival**

The provisions of this Agreement with respect to indemnification and liability will survive the termination of this Agreement.

## **22. Notices and Other Communications**

Except as otherwise provided in this Agreement or as may be specified by the parties in writing, any notice or other communication required under this Agreement must be in writing and must be sent by registered or certified United States mail, or by messenger, or by facsimile, or by other electronic means. Any such notice or other communication must be addressed as follows and, if so addressed, will be effective upon actual receipt.

**If to Owner:**

Beauflor USA, LLC  
Attn: Emile Coopman  
1 Beauflor Way  
White, GA 30184  
Phone: (470) 548-3667

**If to City:**

City of Cartersville  
Attn: Electric Director  
P.O. Box 1390 (if regular mail)  
320 S. Erwin St. (if overnight mail)  
Cartersville, GA 30120  
Phone: 770-387-5631  
Fax: 770-387-5630

**If to Solar Financing Agent:**

Cherry Street Energy, LLC  
Attention: General Counsel  
1000 Marietta St NW, #290  
Atlanta, GA 30318  
(404) 589-1830

## **23. Entire Agreement**

This Agreement, together with its attachments, constitutes the entire agreement between the parties and supersedes all previous written or oral communications, understandings and agreements between the parties unless specifically stated otherwise within this Agreement. This Agreement may only be amended by a written agreement signed by both parties. Email and all other electronic (including voice) communications from the City in connection with this Agreement are for informational purposes only. No such communications are intended by the City to constitute either an electronic record or an electronic signature or to constitute any agreement by the City to conduct a transaction by electronic means. Any such intention or agreement is expressly disclaimed.

## **24. Acknowledgements Regarding Agreement**

By signing below, the Owner acknowledges understanding of the terms of this Agreement and that the Owner may not connect the System to the City's electric system until the Owner has received written authorization to connect from the City. Within 30 days after notice from the Owner that the System is ready for interconnection to the City's electric system, the City will inspect the

System and will provide a written authorization to connect the System or a statement that the System may not be connected because of non-compliance with this Agreement.

**25. Compliance with Ordinances and Regulations**

The Owner shall perform all obligations under this Agreement in strict compliance with all applicable federal, state, and City laws, rules, statutes, charter provisions, ordinances and regulations.

**26. Beneficiaries**

This Agreement is for the sole benefit of and binds the parties, their successors and assigns. This Agreement affords no claim, benefit or right of action to any third party. Any party besides the City or the Owner receiving services or benefits under this Agreement is only an incidental beneficiary.

**27. Status of Owner**

The Owner shall perform all operations under this Agreement as an independent Contractor, and not as an agent or employee of the City. No City official or employee shall supervise the Owner. The Owner will exercise no supervision over any employee or official of the City. The Owner shall not represent that Owner is an employee or agent of the City in any capacity. The Owner has no right to Worker's Compensation benefits from the City or its insurance carriers or funds.

**REMAINDER OF PAGE BLANK  
SIGNATURES ON NEXT PAGE**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

Signed, sealed and delivered in the presence of: OWNER:

BEAUFLORE USA, LLC

Emile Cozman  
Unofficial Witness

By: [Signature]  
(Signature)

Signed & attested to on May 9, 2025  
by Teun Andeweg.

Print Name: TEUN ANDEWEG

Kim Bleck  
My commission expires  
May 17, 2025



Title: ADMINISTRATION OFFICER

Attested to by:

CITY:

CITY OF CARTERSVILLE, a Georgia  
Municipal Corporation

Julia Drake, City Clerk

By: Matthew J. Santini, Mayor

[AFFIX SEAL]

#### ACKNOWLEDGMENT BY SOLAR FINANCING AGENT

The Solar Financing Agent has read, understands, and agrees to be bound by the terms and conditions so required of it in this Electrical Interconnection and Power Exchange Agreement as stated above.

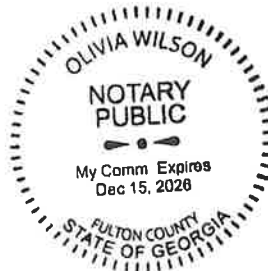
This 8 day of MAY, 2025.

CHERRY STREET ENERGY

By: [Signature]  
(Signature)

Print Name: MICHAEL CHANIN

Title: CEO



**Exhibit A**

**APPLICATION FOR INTERCONNECTION  
OF DISTRIBUTED GENERATION FACILITY**

(Attach Owner's "Application for Interconnection of Distributed Generation Facility"  
describing in detail the Owner's distributed generation facility, the "System".)



## **Application for Interconnection of Distributed Generation Facility**

The following application must be completed in its entirety and returned to the City of Cartersville Electric System (CES) at least 30 days prior to the anticipated interconnection date so that ample time is given to process the request. **At no point is the customer permitted to operate their distributed generation facilities in parallel with CES's electric distribution system until written authorization has been received from CES.** In addition, applicable permits must be obtained from the City of Cartersville Building Inspections Department prior to installation of the distributed generation and any associated equipment.

### **APPLICATION FEE**

Residential Generators:

No charge

Non-residential Generators:

No charge

### **DISTRIBUTED GENERATION POLICY**

Customers desiring to interconnect and/or sell electrical energy to CES produced by a distributed generation facility must be eligible for participation.

A distributed generation facility must:

1. Be owned and operated by an electrical customer of CES for production of electric energy; and,
2. Be located on the customer's premises; and,
3. Be connected to and operate in parallel with CES's distribution facilities; and,
4. Be intended primarily to offset part or all of the customer's requirement for electricity; and,
5. Be a "Renewable Energy Source" as defined by the State of Georgia such that energy supplied is from a technology approved in the Georgia Green Pricing Accreditation Program.

CES is not obligated to permit interconnection or to purchase energy from a distributed generation facility that does not meet the requirements above or that has a peak generating capacity exceeding 10 kW per residential installation or 100 kW per nonresidential installation in accordance with The Georgia Cogeneration and Distributed Generation Act of 2001. Requests outside the scope of this policy will be evaluated on a case-by-case basis.

CES will only be required to purchase energy from eligible distributed generation facilities on a first-come, first-served basis until the cumulative generating capacity of all renewable energy sources from all customers equals 0.2% of the City's annual peak demand in the previous year. CES may purchase, but is not obligated to purchase, additional energy at a cost agreed to by it and the customer.

### **Metering:**

CES will install single directional metering or bi-directional metering for an approved distributed generation facility depending on the customer's method of installation. All installed costs for metering and associated equipment will be paid by the customer prior to distributed generation service being initiated. Net metering is not employed by CES.

Bi-directional metering uses one (1) meter to separately measure both the flow of electricity from the utility to the customer and the flow of electricity from the customer to the utility. Bi-directional metering shall be used where distributed generation facilities are connected on the customer's side of the utility meter.

Single directional metering uses two (2) meters and is used where the generation facilities are not located on the customer's side of the utility meter. One meter measures the flow of electricity from the utility to the customer for the non-generating facility and the other meter measures the flow of electricity from the customer to the utility for the generating facility.

**Payment for energy:**

Payment for electricity shall be consistent with The Georgia Cogeneration and Distributed Generation Act of 2001 (OCGA § 46-3-50).

**Bi-directional metering:**

- CES shall own the bi-directional meter. CES shall measure electricity provided to customer and electricity received from customer during the billing period.
- Electricity provided to customer shall be billed in accordance with the standard tariff.
- Customer shall be credited for energy delivered to CES in accordance with the distributed generation energy rider.

**Single directional metering:**

- CES shall own both single directional meters. CES shall measure electricity provided to customer and electricity received from customer during the billing period.
- Electricity provided to customer shall be billed in accordance with the standard tariff.
- Customer shall be billed an administration charge each billing period and credited for energy delivered to CES in accordance with the distributed generation energy rider.

**Application and approval:**

The customer shall be responsible for all costs associated with distributed generation and ensure a safe and reliable interconnection with CES. All fees, metering, engineering, and installation costs must be paid and the following documents must be completed and approved in their entirety prior to interconnection:

- Application for Interconnection of Distributed Generation Facility
- Electrical Interconnection and Power Exchange Agreement
- Electrical Permit

**Power quality requirements:**

Power accepted from customer shall conform to the following power quality requirements:

Voltage – The system must operate within 88 to 110% of nominal voltage and must trip off-line in response to voltages outside this range as follows:

$V < 50\%$	10 cycles max.
$50\% \leq V < 88\%$	120 cycles max.
$88\% \leq V \leq 110\%$	normal operation
$110\% < V \leq 120\%$	60 cycles max.
$V > 120\%$	10 cycles max.

Flicker – The system shall not create objectionable flicker for other City customers. Flicker is considered objectionable when it either causes a modulation of the light level of lamps sufficient to be irritating to humans or causes equipment malfunction.

Frequency – The system must operate within a frequency range of 59.3 to 60.5 Hz. and must trip off-line in response to frequencies outside this range within 10 cycles.

Waveform Distortion (Harmonics) – The system must have low current-distortion levels to ensure that no adverse effects are caused to other equipment connected to the City's electric system. When the system is serving balanced linear loads, harmonic current injection into the City's network shall not exceed the following levels:

Odd harmonics (h):

$h < 11$	$11 \leq h < 17$	$17 \leq h < 23$	$23 \leq h < 35$	$h \geq 35$
4.0%	2.0%	1.5%	0.6%	0.3%

Maximum Total Demand Distortion (TDD) 5.0%

Even harmonics: Even harmonics are to be limited to 25% of the odd harmonics shown above.

**Power Factor** – The system must operate at a power factor  $>0.85$  (leading or lagging) when output is greater than 10% of full load.

**Islanding Protection** – The system must trip off-line and remain off-line in the event of a fault on the customer's system or loss of source on the City's electric system.

**Physical requirements:**

The customer's over-current protective device at the service panel must be dedicated and must be capable of interrupting the maximum available fault current and shall be clearly marked to indicate power source and connection to the City's electric system.

Customer is required to provide CES a readily accessible solid blade disconnect switch adjacent to the service point on the exterior of the building suitable for a utility lock. As determined by CES, the switch must meet "visible air gap" requirements, be placed at an approved location, be dedicated to utility, permanently marked "GENERATION DISCONNECT", and must be capable of interrupting the maximum available fault current of customer's distributed generation system.

**Renewable energy credits:**

They City may accept, but is not obligated to accept, renewable energy credits from the customer. If customer anticipates transferring renewable energy credits to the City, an approved meterbase must be installed adjacent to the above mentioned disconnect suitable for a City meter (production meter). CES shall own the production meter and CES shall measure electricity produced during the billing cycle.

**Inspection and disconnection:**

CES reserves the right to inspect and test customer's equipment at any time to ensure proper operation, compliance with safety requirements, or compliance with power quality requirements. CES may separate customer generation from utility system when, as determined by CES, customer system is unsafe or not in compliance.

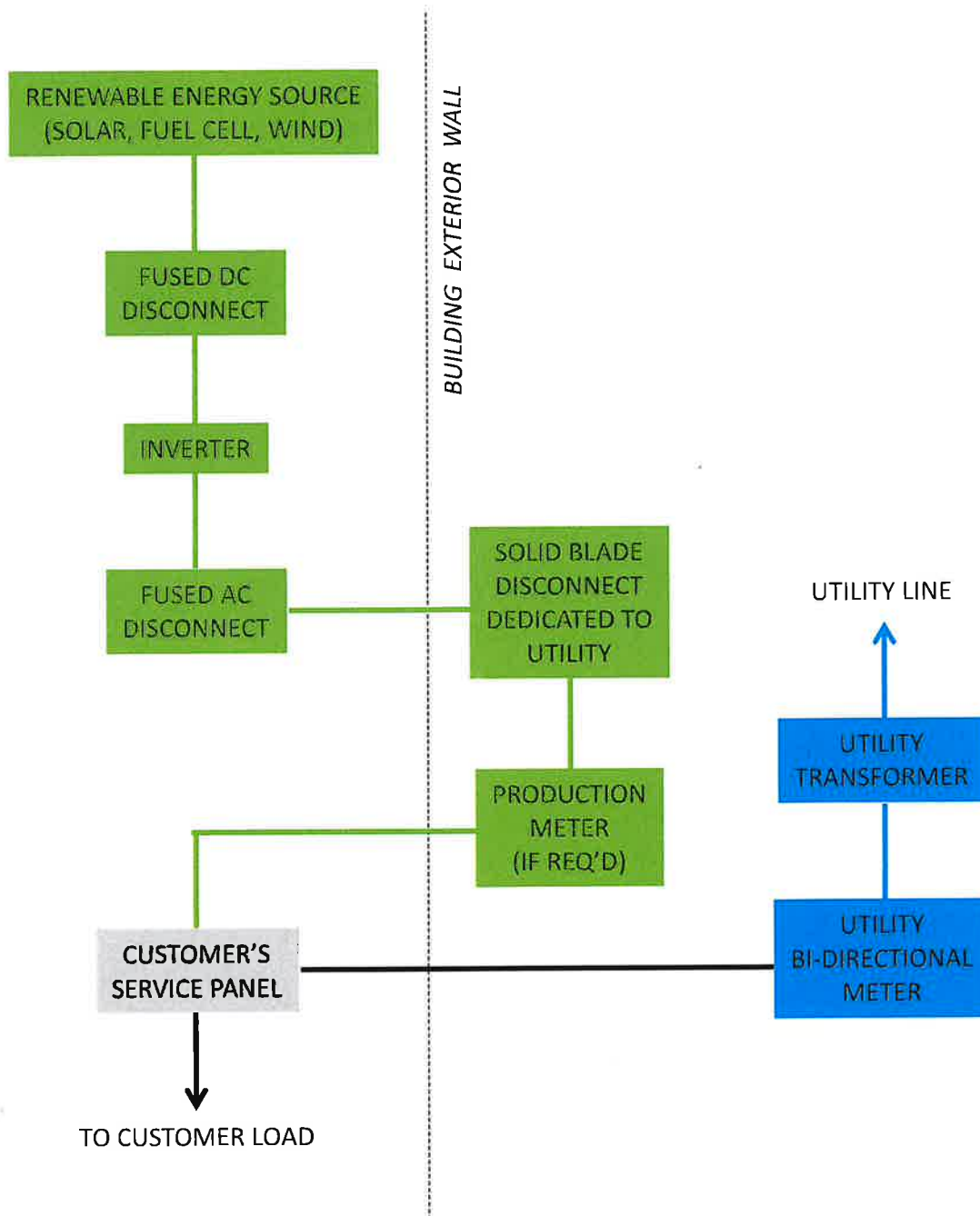
CES reserves the right to separate customer generation from utility system when, as determined by CES, continued parallel operation with distribution system is unsafe or may cause damage to persons or property or when working on de-energized lines to isolate all sources of generation.

If utility service to customer is disconnected for any reason, distributed generation service will also be disconnected.

CES shall not be liable to any person, directly or indirectly, for loss of property, injury, or death resulting from the interconnection of a cogenerator or distributed generation facility to its electrical system.



## CUSTOMER DISTRIBUTED GENERATION TYPICAL CONNECTION – BI-DIRECTIONAL METERING



## SECTION 1 – APPLICANT CONTACT INFORMATION

CES Account Number: 5006947-183707

Applicant Contact: Emile Coopman

Applicant Owner/Company: Beauflor USA, LLC

Address: 1 Beauflor Way, White, GA 30184

Phone: (470) 548-3667 Fax: \_\_\_\_\_

E-mail: Emile.Coopman@beauflor.us

## SECTION 2 – GENERATING FACILITY LOCATION

Address: 1 Beauflor Way, White, GA 30184

## SECTION 3 – CONSULTING ENGINEER OR CONTRACTOR CONTACT INFORMATION

Consultant/Contractor Contact: Ameer Aboneaaj

Consultant/Contractor Company: Cherry Street Energy

Address: 1000 Marietta St. NW, Atlanta, GA

Phone: (404) 216-7338 Fax: \_\_\_\_\_

E-mail: ameer@cherrystreetenergy.com

## SECTION 4 – GENERATING FACILITY/INVERTER INFORMATION

Generator Type: (circle one) Photovoltaic Wind Fuel Cell Hydro Geothermal Other (specify) \_\_\_\_\_

Manufacturer: Silfab Solar

Model Name and Number: SIL-520 QM

kW Rating: 1040 DC kW kVA Rating: \_\_\_\_\_ Interconnection Voltage: 480 V

Will you supply the necessary var requirements?: (circle one) yes no

Disconnect Switch Manufacturer/Model Number: Square D H368NR

Disconnect Switch Rating: 1200 A THD: < 20% Max. Fault Current: 60,000 A

External Disconnect: (circle one) yes no If yes, location: Eastern facing wall near existing transformers

Can the system export power? (circle one) yes no Rated Frequency: \_\_\_\_\_

## SECTION 5 – RENEWABLE ENERGY CREDITS (REC's)

Is transfer of REC's to City anticipated? (circle one) yes ☒ no

External utility production meter: (circle one) yes ☒ no

## SECTION 6 – ONE-LINE DIAGRAM AND ADDITIONAL INFORMATION

One-Line Diagram Attached: (circle one) ☒ no Product Literature Attached: (circle one) ☒ no

Obtained Electrical Permit: (circle one) ☒ no

**Note: One-line diagram must include all major equipment including, but not limited to, generators, inverters, circuit breakers, and protective relays.**

## SECTION 7 – EXISTING ELECTRIC SERVICE

Main Panel Ampere Rating: 4000 A Main Panel Voltage Rating: 480Y/277V

Service Character: (circle one) Single phase ☒ Three phase

## SECTION 8 – DISTRIBUTED GENERATION INSTALLATION INFORMATION

Is the normal operation of this generator intended to provide power to meet base load, demand management, standby, back-up, or other? (describe) \_\_\_\_\_

This generator is intended to be a supplemental power source to the facility. This installation will not back-feed to the grid.

Estimated In-Service Date: July 2025 Estimated Interconnection Date: April 2025

## SECTION 9 – APPLICANT'S CERTIFICATION

I, the Applicant, certify that I have read and understand CES's Distributed Generation Policy and that the information provided in this Application is true and accurate to the best of my knowledge.

Printed Name of Applicant: Ameer Aboneaaj

Signature:  Date: 03/26/2025

**SECTION 10 – TO BE COMPLETED BY CES PERSONNEL**

CES Contact: Chad Prater

Phone: 770-387-5631

Fax: \_\_\_\_\_

E-mail: cprater@cityofcartersville.org

Address: 320 S. Erwin St, Cartersville, GA 30120

Application accepted for review: (circle one) yes no If no, why: \_\_\_\_\_

Project Approval: (circle one) Approved Not Approved If not approved, why: \_\_\_\_\_

Type customer: (circle one) Residential Non residential

Utility metering: (circle one) Bi-directional Single directional

Production meter: (circle one) Yes No

Renewable Energy Credits: (circle one) Yes No

Fees: Metering: N/A

Engineering: N/A

Installation: N/A

Total Fee: N/A

Director's Signature (if approved): Thomas J. McGehee

Date Interconnection/Power Exchange Agreement forwarded to Applicant: 5/7/2025

Date Interconnection/Power Exchange Agreement received from Applicant: 5/9/2025

Date Interconnection/Power Exchange Agreement approved by Council: \_\_\_\_\_

**Exhibit B**

**AUTHORIZATION or NON-AUTHORIZATION**

This notice is provided to the owner of a distributed generation system detailing authorization or non-authorization to connect to the City of Cartersville's electric system pursuant to an existing Electrical Interconnection and Power Exchange Agreement.

This notice is an Exhibit B and is hereby made a part of said Agreement superseding any prior Exhibit B.

Name: Beauflor USA, LLC

Address: 1 Beauflor Way, White, GA 30184

System tested by: Chad Prater

Date: 5/1/2025

**Section A: Authorization.** The System has been inspected and tested and may be connected to the City's electric system.

Signed by: Thomas J. McKee

Printed Name: Thomas J. McKee

Printed Title: Electric Director

Date: 5/12/2025

**OR**

**Section B: Non-Authorization.** The System cannot be connected to the City's electric system because the System does not comply with Agreement or does not test properly.

Signed by: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

**Exhibit C**

**DISTRIBUTED GENERATION ENERGY RIDER**

(Attach Distributed Generation Energy Rider)

**Sec. 24-261. Distributed generation rider, DGR-1.**

- (a) *Effective date.* Bills rendered on or after July 18, 2019.
- (b) *Availability.* Applicable to customers in all areas served by the Cartersville Electric System (the utility) and subject to its service rules, regulations, terms, policies and procedures, as amended from time to time, which are incorporated herein by this reference, and desiring to install a distributed generation facility. Customer account(s) must be in good standing.
- (1) A distributed generation facility must:
- Be owned (or leased) and operated by an existing customer for production of electric energy;
  - Be connected to and/or operate in parallel with the utility's distribution facilities;
  - Be intended primarily to offset part or all of the customer's generator's requirement for electricity; and
  - Have peak generating capacity of not more than ten (10) kW for residential applications and not more than one hundred twenty-five (125) percent of actual or expected maximum annual peak demand of the premises for commercial applications.
  - Be installed on the customer side of the meter.
- (c) *Monthly metering charge.*
- (1) Bi-directional metering charge \$4.50 per month
- (2) The City of Cartersville Electric System will install bi-directional metering for all applicable Customers. All incremental costs for metering and associated equipment (e.g. poly-phase meters, trans-sockets, dual-gang sockets, etc.) and interconnection costs will be paid by the Customer at the time service is initiated under this policy. Additionally, Customer agrees to pay a monthly metering charge as outlined above.
- Bi-directional metering is defined as measuring the amount of electricity supplied by the utility and the amount fed back to the City by the Customer's distributed generation facility during the billing period using the same meter. Bi-directional metering shall be used where distributed generation facilities are connected to the City on the Customer's side of the Customer's meter.
- (d) *Monthly Rate.* The utility requires each customer with a distributed generation facility to pay the following monthly rate that shall supersede the specific charges (Administrative, Demand, Energy) under the standard service rate tariff.
- Availability, Applicability, and Type of Service shall remain the same.
- Minimum monthly bill: Administrative Charge, plus Demand Charge, plus any applicable riders
- Billing Demand: customer's metered demand in the current billing month.
- (If existed) Reactive Demand, Term, and Terms and conditions shall remain the same.
- Mandatory riders and optional riders will continue to apply to the monthly bill.
- (1) DIVISION 21. - MEDIUM ECONOMIC DEVELOPMENT; TARIFF MED-6
- Administrative Charge: \$250.00
  - Demand Charge: \$10.50 per kW of billing demand
  - Energy Charge:  
Consumption (kWh) not greater than two hundred (200) hours times the billing demand: 4.85 ¢/kWh

Consumption (kWh) in excess of two hundred (200) hours and not greater than four hundred (400) hours times the billing demand: 4.20 ¢/kWh

All consumption (kWh) in excess of four hundred (400) hours times the billing demand: 3.80 ¢/kWh

(2) DIVISION 22. - RESIDENTIAL POWER SERVICE; TARIFF RP-5

- a. Administrative Charge: \$25.00
- b. Demand Charge: \$7.60 per kW of billing demand
- c. Energy Charge:  
All kWh: 5.00 ¢/kWh

(3) DIVISION 23. – CITY GOVERNMENT SERVICE; TARIFF CG-4

- a. Administrative Charge: \$75.00
- b. Demand Charge: \$10.00 per kW of billing demand
- c. Energy Charge:  
All kWh: 5.50 ¢/kWh

(4) DIVISION 24. - SMALL POWER SERVICE; TARIFF SP-4

- a. Administrative Charge: \$75.00
- b. Demand Charge: \$10.00 per kW of billing demand
- c. Energy Charge:  
All kWh: 5.50 ¢/kWh

(5) DIVISION 25. - MEDIUM POWER SERVICE; TARIFF MP-4

- a. Administrative Charge: \$75.00
- b. Demand Charge: \$10.00 per kW of billing demand
- c. Energy Charge:  
All kWh: 5.50 ¢/kWh

(6) DIVISION 26. - LARGE POWER SERVICE; TARIFF LP-5

- a. Administrative Charge: \$250.00
- b. Demand Charge: \$12.00 per kW of billing demand
- c. Energy Charge:

Consumption (kWh) not greater than two hundred (200) hours times the billing demand: 4.72 ¢/kWh

Consumption (kWh) in excess of two hundred (200) hours and not greater than four hundred (400) hours times the billing demand: 3.80 ¢/kWh

Consumption (kWh) in excess of four hundred (400) hours and not greater than six hundred (600) hours times the billing demand: 3.40 ¢/kWh

All consumption (kWh) in excess of six hundred (600) hours times the billing demand: 2.60 ¢/kWh



(7) DIVISION 27. - EXTRA LARGE POWER SERVICE; TARIFF XLP-4

- a. Administrative Charge: \$350.00
- b. Demand Charge: \$16.00 per kW of billing demand
- c. Energy Charge:
  - Consumption (kWh) not greater than two hundred (200) hours times the billing demand: 4.65 ¢/kWh
  - Consumption (kWh) in excess of two hundred (200) hours and not greater than four hundred (400) hours times the billing demand: 3.20 ¢/kWh
  - Consumption (kWh) in excess of four hundred (400) hours and not greater than six hundred (600) hours times the billing demand: 3.00 ¢/kWh
  - All consumption (kWh) in excess of six hundred (600) hours times the billing demand: 2.60 ¢/kWh

(8) DIVISION 29. - SMALL GENERAL SERVICE; SG-3

- a. Administrative Charge: \$25.00
- b. Demand Charge: \$7.60 per kW of billing demand
- c. Energy Charge: 5.00 ¢/kWh

(9) DIVISION 35. - EXTRA EXTRA LARGE POWER SERVICE; TARIFF XXLP-1

- a. Administrative Charge: \$350.00
- b. Demand Charge: \$16.00 per kW of billing demand
- c. Energy Charge:
  - Consumption (kWh) not greater than two hundred (200) hours times the billing demand: 4.65 ¢/kWh
  - Consumption (kWh) in excess of two hundred (200) hours and not greater than four hundred (400) hours times the billing demand: 3.20 ¢/kWh
  - Consumption (kWh) in excess of four hundred (400) hours and not greater than six hundred (600) hours times the billing demand: 3.00 ¢/kWh
  - All consumption (kWh) in excess of six hundred (600) hours times the billing demand: 2.60 ¢/kWh

(e) *Energy Buy-back and Payment for Excess Energy.*

- (1) The utility will only be required to purchase energy from eligible distributed generation facilities on a first-come, first-served basis until the cumulative generating capacity of all renewable energy sources from all customers equals the percentage of the utility's annual peak demand in the previous year as set forth in DG Act. Additional energy may be purchased by the utility at its sole discretion at a cost agreed to by it and the customer provider. The utility shall at no time be required to purchase energy from customers in excess of amounts required by the DG Act.
- (2) *Bi-directional metering.*

- a. When electricity supplied by the utility exceeds electricity generated by the customer's distributed generation, the electricity shall be billed by the utility in accordance with the applicable tariff(s).
  - b. When electricity generated by the customer's distributed generation system exceeds electricity supplied by the utility, the customer shall be billed for the customer charges as described in the standard rate for that billing period and credited for excess kWh generated during the billing period at the utility's avoided energy cost.
- (3) *Avoided energy cost.* Payments by the utility to the customer for the billing period metered avoided energy kWh's will be computed by the utility in its sole discretion based on the average monthly wholesale market price as determined by the Municipal Electric Authority of Georgia (MEAG Power), the utility's wholesale energy provider.
- (f) *Safety, power quality, and interconnection requirements.*
  - (1) The customer shall be responsible for ensuring a safe and reliable interconnection with the utility and all costs incurred therein. The utility has available, upon request, the following documents that must be completed and approved in their entirety prior to interconnection by the customer to the utility's distribution system:
    - a. Application for interconnection of distributed generation facility;
    - b. Interconnection agreement;
    - c. Electrical power exchange agreement.
  - (2) The provisions in all documents outlined above are incorporated into this tariff in their entirety. For the avoidance of doubt, customer shall be deemed to have agreed to such provisions by applying for service under this tariff.
  - (3) The utility will only be required to purchase energy from eligible distributed generation facilities on a first-come, first-served basis until the cumulative generating capacity of all renewable energy sources from all customers equals the percentage of the utility's annual peak demand in the previous year as set forth in O.C.G.A. § 46-3-56(a). Additional energy may be purchased by the utility at its sole discretion at a cost agreed to by it and the customer provider. The utility shall at no time be required to purchase energy from customers in excess of amounts required by the DG Act.
  - (4) The utility reserves the right to separate the customer generator's equipment from city lines and facilities when, in the utility's judgment, the continued parallel operation is unsafe or may cause damage to persons or property. Upon such separation, the utility shall promptly notify the customer generator so that any unsafe condition can be corrected.

(Ord. No. 05-17, § 1, 2-16-17; Ord. No. 31-19, § 1, 8-1-19)

**Exhibit D**

**NOTICE OF POWER EXCHANGE AMOUNT**

This notice is provided to the owner of a distributed generation system detailing changes in the amount of Renewable Energy Credits and/or electrical energy to be purchased by the City of Cartersville pursuant to an existing Electrical Interconnection and Power Exchange Agreement.

This notice is an Exhibit D and is hereby made a part of said Agreement superseding any prior Exhibit D.

Date of Notice: N/A

Consumption month change will occur: N/A

Renewable Energy Credits to be purchased: N/A

Maximum monthly consumption (kWh) to be purchased: N/A

**Exhibit E****SOLAR ENERGY PROCUREMENT AGREEMENT**

(Attach)



## SOLAR ENERGY PROCUREMENT AGREEMENT

This Solar Energy Procurement Agreement ("**Agreement**") is entered into this 19<sup>th</sup> day of December 2024 ("**Effective Date**"), between the parties listed below (each a "**Party**" and collectively the "**Parties**").

<b>Purchaser:</b>	Beauflor USA, LLC	<b>Seller:</b>	Cherry Street Asset Management Holdings, LLC
<b>Address:</b>	One Beauflor Way White, GA 30184 Attention: Teun Andeweg <a href="mailto:Teun.Andeweg@beauflor.us">Teun.Andeweg@beauflor.us</a>	<b>Address:</b>	1000 Marietta Street NW, #290 Atlanta, GA 30318 Attention: Michael Chanin <a href="mailto:michael@cherrystreetenergy.com">michael@cherrystreetenergy.com</a>
<b>Phone:</b>	(678) 535-5800	<b>Phone:</b>	(404) 589-1830

**Summary:** Purchaser owns or leases certain property (the "**Property**") with one or more locations (each a "**Facility Site**") on which Purchaser desires to receive and utilize Solar Energy generated by solar technology as described in Appendix C (each a "**Facility**") installed and operated by Seller. At no cost to Purchaser for materials, installation and operation, Seller will arrange for the design, permitting, construction, installation, testing and activation of one or more Facilities on the Property. Seller will own, operate and maintain each Facility so as to generate electric energy for use at the Property. Over the Term, Seller shall receive payments based on the performance and output of each Facility installed and operated by Seller, making this a solar energy procurement agreement as defined by O.C.G.A. § 46-3-62(12). The Parties desire to set forth the terms and conditions upon which each Facility will be installed by Seller at the applicable Facility Site(s) so that Solar Energy will then be provided for use by Purchaser.

### 1. Property:

Purchaser ☒ owns ☐ leases the Property.

### 2. Facility Site and Facility:

Site(s)	Capacity (kW-DC)	Estimated Annual Production (kWh)
Beauflor Campus	1,030	1,508,950 <sup>1</sup>

3. **Term:** This Agreement shall become effective on the Effective Date and shall remain in full force and effect until the 30<sup>th</sup> anniversary of the Commencement Date.

4. **Renewal Term(s):** up to two consecutive periods of five (5) years each

<sup>1</sup> This figure represents estimated Total System Production, inclusive of Excess Energy. Consumed Energy is estimated at approximately 95% of Total System Production, or 1,420,370 kWh.

5. **Contract Energy Price:** \$0.0710/kWh
6. **Annual Escalation Rate:** 2.0%
7. **Environmental Attributes:** Accrue to [x] Purchaser ☐ Seller
8. **Incentives:** Accrue to Seller
9. **Target Commercial Operation Date:** June 30, 2025


The following appendices are incorporated by reference and made part of this Agreement:

<u>Appendix A</u>	Definitions and Interpretations
<u>Appendix B</u>	Terms and Conditions
<u>Appendix C</u>	Facility and Facility Site
<u>Appendix D</u>	Legal Description of Property
<u>Appendix E</u>	Memorandum of License
<u>Appendix F</u>	Liens and Encumbrances
<u>Appendix G</u>	Form of SNDA
<u>Appendix H</u>	Insurance Requirements
<u>Appendix I</u>	Form of Addendum
<u>Appendix J</u>	Early Termination Fee

[Signature pages follow]

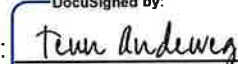
IN WITNESS WHEREOF, in consideration of the Parties' promises and obligations in this Agreement including all Appendices, the Parties agree to and have executed this Solar Energy Procurement Agreement under seal the day and year first below written.

**SELLER: CHERRY STREET ASSET  
MANAGEMENT HOLDINGS, LLC**

Signed by:  
By:   
74299E9F5823451...  
Name: Michael Chanin  
Title: CEO  
Date: 12/19/2024

[Seal]

**PURCHASER: BEAUFLOR USA, LLC**

DocuSigned by:  
By:   
E2823180F8504DD...  
Name: Teun Andeweg  
Title: Administration Officer  
Date: 12/19/2024

[Seal]

## **APPENDIX A – DEFINITIONS AND INTERPRETATIONS**

1. **Definitions.** When used in the Agreement and Appendices, all capitalized terms have the meanings set forth below. All references to "Sections" are to Sections of Appendix B to the Agreement.

**"AAA"** - has the meaning set forth in Section 18.1.

**"Access License Area"** – has the meaning set forth in Section 3.1.

**"Added Facility"** – means solar technology installed at a location other than the Facility Sites set forth in Section 1 of the Cover Sheet as of the Effective Date pursuant to an Addendum to this Agreement as described in said Addendum.

**"Added Facility Site"** – has the meaning set forth in an Addendum to this Agreement.

**"Addendum"** – means a supplement to this Agreement in a form substantially similar to Appendix I executed by both Parties and providing for the design, permitting, construction, installation, testing and activation of solar technology and the furnishing of Solar Energy from an Added Facility at an Added Facility Site and/or a Facility Upgrade at the Facility Site, along with any and all attachments or appendices thereto, and explicitly subject to the terms and conditions of this Agreement.

**"Adjustment Period"** - has the meaning set forth in Section 8.2.5(ii).

**"Affiliate"** – means, for any specified entity, any other entity directly or indirectly controlling or controlled by or under direct or indirect common control with such specified entity. For purposes of this definition, "control" means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. The direct or indirect owner of fifty percent (50%) of the outstanding stock or other equity interest of an entity has "control" of such entity; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

**"Annual Escalation Rate"** – means the agreed percentage increase to the Contract Energy Price during each Annual Period of the Term as set forth in Section 6 of the Cover Sheet.

**"Annual Period"** - means a period of twelve (12) consecutive Months commencing on January 1<sup>st</sup> of each year; provided, however, that: (a) the initial Annual Period shall commence on the Commencement Date and end on December 31<sup>st</sup> of the same year; and (b) the final Annual Period shall commence on January 1<sup>st</sup> of the year in which the Term expires and end on the Expiration Date.

**"Annual Reconciliation"** – shall mean the process described in Section 9.2 to determine whether and how to address any Excess Energy Overage occurring in the prior Annual Period, including whether and to what extent Purchaser may be entitled to an Excess Energy Credit from Seller.

**"Applicable Law"** – means all laws, ordinances, judgments, decrees, injunctions, writs and orders of any Governmental Authority, and any codes, standards, requirements, rules, regulations, orders and interpretations of any federal, state, county, municipal, regional, environmental or other Governmental Authority or other body having jurisdiction over the Seller, the Purchaser, the Facility or Facility Site, the performance of the Seller's Work, the permitting, development, ownership or operation of the Facility, or the qualification of the

Facility for any Incentive, including any and all applicable permits, environmental laws, anti-corruption laws and trade control laws, in each case, as such Applicable Laws may be modified, vacated or amended from time to time.

**"Billing Dispute Notice"** - has the meaning set forth in Section 11.2.3.

**"Business Day"** - means any Day excluding Saturday and Sunday and any Day on which banking institutions in Atlanta, Georgia are closed due to a federal holiday.

**"Casualty"** – has the meaning set forth in Section 17.5.

**"Change of Control Transaction"** – in respect of a Person means any transaction or series of related transactions which, if consummated, would result in such Person being an Affiliate of a different ultimate parent entity immediately after such transaction. A Person's ultimate parent entity is the Person who directly or indirectly controls fifty percent (50%) or more of such Person's outstanding capital stock or other equity interests having ordinary voting power and who does not itself have an ultimate parent entity.

**"Claim" or "Claims"** - has the meaning set forth in Section 18.1.

**"Commencement Date"** – means the date on which the Facility has received approval from the Utility Provider to operate, which Commencement Date triggers the start of the Term.

**"Commercial Operation"** - has the meaning set forth in Section 5.4.2.

**"Commercial Operation Date"** – means the date on which the Facility achieves Commercial Operation.

**"Commercial Operation Deadline"** – means the deadline for achieving Commercial Operation of the Facility as set forth in the Final Construction Schedule.

**"Commercial Operation Date, Added Facility"** – means the date on which any Added Facility achieves Commercial Operation.

**"Confidential Information"** - means business or technical information rightfully in the possession of either Party, which information derives actual or potential commercial value from not being generally known or readily ascertainable through independent development, or reverse engineering by persons who can obtain economic value from its disclosure and use, and includes information furnished or disclosed to the other Party in connection with discussions leading up to execution of this Agreement, including this Agreement. Confidential Information must be designated in writing as confidential by the Party supplying such information (the "Disclosing Party," the other Party being the "Receiving Party"). Confidential Information does not include information which: (i) is or becomes publicly available other than as a result of a violation of this Agreement; (ii) was, at the time of the disclosure, already in the Receiving Party's possession; (iii) is disclosed to the Receiving Party by a third Party who, to the Receiving Party's knowledge, is not prohibited from disclosing the information pursuant to any agreement with the Disclosing Party; (iv) the Receiving Party develops or derives without the aid, application or use of the privileged or proprietary information; or (v) the Receiving Party is required to disclose pursuant to Applicable Law.



**"Consent"** – means any approval, consent, authorization or other applicable requirement with respect to the Facility from any jurisdictional Governmental Authority, including all applicable environmental certificates, licenses, permits and approvals.

**"Construction Schedule"** – means the schedule for the construction and completion of Seller's Work at the Facility Site associated with the Facility, including milestone dates for each of Seller's Conditions Precedent and Purchaser's Conditions Precedent for such Facility, and interim milestone dates for the achievement of certain stages of permitting, construction, interconnection, and operation as may be proposed by Seller and reasonably agreed to by Purchaser with respect to the applicable Facility Site. The Construction Schedule may be revised from time to time with the express approval of both Seller and Purchaser, such approval not to be unreasonably withheld, conditioned or delayed.

**"Consumed Energy"** – means Monthly Delivered Energy minus all Excess Energy generated and delivered by Seller during the same Month.

**"Contract Energy Price" or "CEP"** – means the amount in \$/kWh charged by Seller and to be paid by Purchaser for Solar Energy delivered to Purchaser from the Facility as set forth in Section 5 of the Cover Sheet and as adjusted during each year of the Term by the Annual Escalation Rate. For an Added Facility or Facility Upgrade, the Contract Energy Price shall be set forth in an Addendum.

**"Contractor"** – means any contractor, subcontractor, development manager, mechanic, materialman or supplier of services engaged by Seller or Purchaser to perform work at or around the Facility Site.

**"Day"** - means a calendar day.

**"Decommission"** – means (i) to remove the Facility and all of Seller's construction materials and equipment from the applicable Facility Site, including disconnecting same from Purchaser's Electric System in accordance with any applicable Interconnection Agreements; (ii) to properly dispose of all debris and trash caused by such removal; and (iii) to restore the applicable Facility Site to good and clean condition as it existed prior to the commencement of Seller's Work, ordinary wear and tear excepted and with Purchaser's Electric System not suffering from any limit or failures in performance due to such Decommissioning; provided, however, that the foregoing requirements shall be subject to reasonable modifications as may be agreed upon by Seller and Purchaser, if applicable.

**"Delay"** – means any delay, hindrance or disruption that (i) delays the performance of Seller's Work that is Critical Path Work on the Final Construction Schedule, (ii) causes Seller to complete the Seller's Work after the applicable Commercial Operation Deadline, and (iii) in connection with such event, Seller is unable to proceed with other portions of Seller's Work so as not to cause a delay in the applicable Commercial Operation Date.

**"Disclosing Party"** – has the meaning set forth in the definition of Confidential Information.

**"Disputing Party"** - has the meaning set forth in Section 18.2.1.

**"Dispute Response"** - has the meaning set forth in Section 18.2.1.

**"Dispute Review Notice"** - has the meaning set forth in Section 11.2.4.

**"Early Termination Date"** – has the meaning set forth in Section 6.1.1.

**"Early Termination Fee"** - means, for the applicable Facility, an amount in Dollars equal to the net present value of the remaining Monthly Energy-Based Payments for the Initial Term, at a 5% discount rate, calculated as of the date of the event triggering the payment of the Early Termination Fee. For purposes of calculating the Early Termination Fee, the remaining Monthly Energy-Based Payments will be determined consistent with the determination of Estimated Production but also factoring in a deterioration of Output from the Facility of 0.5% per year. Appendix J portrays (for illustrative purposes only) the manner in which the Early Termination Fee would be calculated in the event of an early termination for each year beginning with the sixth (6<sup>th</sup>) year after the Commencement Date of the Agreement.

**"Early Termination Notice"** – has the meaning set forth in Section 6.2.1.

**"Effective Date"** - means the date set forth in the opening paragraph to the Agreement. For any Addendum to this Agreement, the term "Effective Date" means the date on which both Parties have signed the Addendum.

**"Emergency"** – means an event occurring at the Facility, the Facility Site, or on land adjacent to the Facility Site that (a) poses actual or imminent risk of: (i) serious personal injury or (ii) material physical damage to the Project or any improvements located on the Facility Site or such adjacent land; and (b) requires, in the good faith determination of Seller or Purchaser, as applicable, immediate preventative or remedial action to prevent damage or destruction to any improvements or property or to prevent injury or death to any persons.

**"Environmental Attributes"** – means any and all "Renewable Energy Credits" or "RECs," solar energy credits, carbon or greenhouse gas emission credits, and any other benefits, emissions reductions, offsets, and allowances, howsoever entitled, related to the construction, use or production of energy from the Facility or an Added Facility. Environmental Attributes include (i) environmental air quality credits, off-sets or other benefits related to the generation from the Facility in a manner which reduces, displaces or off-sets emissions resulting from fuel combustion at another location pursuant to any Governmental Authority, (ii) credits, off-sets, green pricing programs, Renewable Energy Credit trading programs, or any similar program or benefits derived from the use, purchase or distribution of renewable energy from the Facility or Added Facility pursuant to any Governmental Authority; (iii) any multiple or enhanced renewable energy credits (such as a right to extra credit for renewable energy credits from certain sources as may be specified under Applicable Law) to the extent that the Facility or an Added Facility is eligible for such treatment. Environmental Attributes do not include Incentives.

**"Estimated Annual Production Notice"** – means the written notice to be provided by Seller to Purchaser upon achieving Commercial Operation of the Facility setting forth the Total System Production expected during each Annual Period based upon final, as-built conditions and factoring in an assumed deterioration in Output of 0.5% per Annual Period.

**"Estimated Production"** – has the meaning set forth in Section 9.3.1.

**"Event of Default"** - has the meanings ascribed to it in Section 13.1 for Seller and Section 13.2 for Purchaser.

**"Excess Energy"** – means Monthly Delivered Energy generated in excess of Consumed Energy.

**"Excess Energy Credit"** – means any credit determined to be Purchaser pursuant to an Annual Reconciliation.

**"Excess Energy Overage"** – means, in any Annual Period, Excess Energy that is more than five percent (5%) of Total System Production.

**"Expiration Date"** – has the meaning set forth in Section 6.1.1.

**"Facility"** - means the equipment and facilities of the electric generating plant to be constructed by Seller on the Facility Site. The Facility includes the Solar Energy production units and all auxiliary equipment and facilities installed at the Facility Site necessary or used for the production, control, delivery or monitoring of Solar Energy by the Facility, including the equipment utilized to connect the Facility to the Purchaser's electric service provider on either side of the electric service provider's meter. For the avoidance of doubt, any reference to Facility hereunder shall be deemed to include any Added Facility except to the extent (i) inconsistent or conflicting with the terms and conditions set forth in the Addendum entered into in connection with such Added Facility or (ii) otherwise specifically set forth in the Addendum entered into in connection with such Added Facility.

**"Facility Site"** – means the portion of the Property owned or leased by Purchaser on which Seller installs and operates the Facility pursuant to this Agreement. For the avoidance of doubt, any reference to Facility Site hereunder shall be deemed to include any Added Facility Site except to the extent (i) inconsistent or conflicting with the terms and conditions set forth in the Addendum entered into in connection with such Added Facility Site or (ii) otherwise specifically set forth in the Addendum entered into in connection with such Added Facility Site.

**"Facility Upgrade(s)"** – has the meaning set forth in Section 19.7.3. For illustrative purposes only, a Facility Upgrade may include such measures as replacing non-defective, otherwise operable solar modules or inverters with more modern, efficient and reliable substitutes; energy storage equipment; and/or electric vehicle charging infrastructure. A Facility Upgrade requires an Addendum.

**"Fair Market Value"** – means the price that a willing buyer would pay for the Facility or Added Facility, taking into account potential wear and tear that will be deducted from the value of the Facility or Added Facility, in an arm's-length transaction to a willing seller under no compulsion to sell, free and clear of any liens, mortgages, security interests or other encumbrances upon title; or where the Parties cannot agree, the price determined by a third-party independent appraiser pursuant to Section 6.3.1(ii).

**"Final Construction Schedule"** – means the final Construction Schedule approved by Purchaser in writing pursuant to Section 5.2.1. The Final Construction Schedule shall be subject to extension on a day-for-day basis for each day of Delay caused by a Force Majeure Event, Utility Provider-Caused Delay or Purchaser Fault or may otherwise be revised from time to time with the express written approval of both Seller and Purchaser.

**"Final Design Package"** – means the final design package for the Facility prepared by Seller pursuant to Section 5.2.1.

**"Financing Party"** means banks, lenders, noteholders and/or other financial institutions and any agent or third-party transferee thereof.

**"Force Majeure Event"** - has the meaning set forth in Section 17.1.

**"Governmental Authority"** - means any federal, state, or local governmental or regulatory authority, administrative agency, commission, department, board, or court that has jurisdiction over either of the Parties to this Agreement or the subject matter of this Agreement, when referenced in this Agreement.

**"Impasse Notice"** - has the meaning set forth in Section 18.2.2.

**"Incentives"** means (i) a payment paid by a utility or Governmental Authority based in whole or in part on the cost or size of the Facility, such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility or Governmental Authority, based on the production of the Facility, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the Facility or Added Facility; provided, however, that Incentives shall not include Environmental Attributes.

**"Indemnified Party"** – has the meaning set forth in Section 15.1.

**"Indemnifying Party"** – has the meaning set forth in Section 15.1.

**"Initial Term"** – has the meaning set forth in Section 6.1.1.

**"Interconnection Agreement"** – means any agreement between Seller or Purchaser, as applicable, and the Utility Provider containing terms and conditions governing the interconnection and parallel operation of the Facility or Added Facility with the Utility Provider's distribution or transmission system.

**"Interconnection Study"** – means a study conducted by the Utility Provider to evaluate the impact of a proposed Facility interconnection on the network of generation, transmission, or distribution facilities owned or operated by the Utility Provider or other electric utility.

**"Interconnection Study Agreement"** – means an agreement between Seller or Purchaser, as applicable, and the Utility Provider for the latter to conduct an Interconnection Study.

**"Interest Rate"** - means the interest per annum equal to two percent plus the prime rate as published in The Wall Street Journal or comparable successor publication under "Money Rates," as applied on a daily basis and compounded quarterly.

**"kW"** - means kilowatts.

**"kW-DC"** – means kilowatts, direct current.

**"kWh"** - means kilowatt-hours.

**"Liens"** – has the meaning set forth in Section 4.2.1.

**"Longstop Commercial Operation Date"** – means the date that is thirteen (13) Months from the Effective Date.

**"Loss"** – means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, fines, fees, penalties, costs and expenses (including all attorneys' fees reasonably incurred, investigation, defense, litigation, court, or mediation costs, and expert, consultant, or mediator fees or expenses, and other costs and expenses incurred in defending any such matters or in asserting or enforcing any indemnity obligation).

**"Month"** - means a calendar month, commencing at the beginning of the first Day of such calendar month.

**"Monthly"** - has a meaning correlative to that of Month.

**"Monthly Delivered Energy"** or **"MDE"** - means the amount of Output, in kWh, delivered by Seller from the Facility to Purchaser at the Point of Delivery during any given Month pursuant to this Agreement.

**"Monthly Energy-Based Payment"** - means the Monthly amount to be paid by Purchaser to Seller based on the amount of Consumed Energy from the Facility, calculated as the product of Consumed Energy times the applicable Contract Energy Price. For avoidance of doubt, Monthly Energy-Based Payments shall not include payments by Purchaser for Excess Energy.

**"Mortgage"** - means a deed to secure debt, deed of trust, mortgage, collateral assignment, security agreement or similar instrument encumbering all or part of Purchaser's interest in the Facility Site or any other portion of the Property.

**"Mortgagee"** - means the holder, grantee, mortgagee or secured party under any Mortgage.

**"MW"** - means megawatts.

**"MW-DC"** - means megawatts direct current.

**"MWh"** - means megawatt-hours.

**"Notice of Dispute"** - has the meaning set forth in Section 18.2.1.

**"Operations"** - has the meaning set forth in Section 2.2.

**"Output"** - means the Solar Energy in MWh produced by the Facility and delivered by Seller to Purchaser at the Point of Delivery.

**"Party"** or **"Parties"** - means either Purchaser or Seller or both.

**"Person"** - means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

**"Point of Delivery"** - means the point where Seller delivers Solar Energy from the Facility or an Added Facility to Purchaser pursuant to this Agreement.

**"Production Shortfall"** - has the meaning set forth in Section 9.2.

**"Project"** - means the design, engineering, construction, testing and commissioning of the Facility, Added Facility, or Facility Upgrade, and the ownership, operation, management and maintenance of the Facility, Added Facility, or Facility Upgrade all of which being reasonably expected to enable Seller to fulfill its obligations under this Agreement.

**"Property"** - means that certain land lying and being in Bartow County, Georgia and more particularly described in [Appendix D](#) to this Agreement.

**"Proposed Resolutions"** - has the meaning set forth in Section 18.4.

**"Prudent Industry Practices"** - means any of the practices, methods, standards and acts engaged in or approved by a significant portion of the distributed solar power industry in the United States that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result

consistent with good business practices, reliability, economy, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be acceptable practices, methods and acts generally accepted in the United States having due regard for, among other things, manufacturers' warranties, manufacturers' recommendations, and Applicable Laws.

**"Purchaser"** - means Purchaser and its permitted successors and assigns.

**"Purchaser's Conditions Precedent"** - has the meaning set forth in Section 5.6.

**"Purchaser's Electric System"** - means Purchaser's existing electrical system and equipment at the Facility Site and/or on other portions of Purchaser's Property that is owned, operated and maintained by Purchaser and that is to be interconnected with the Facility.

**"Purchaser Fault"** - means a material failure by Purchaser to comply with its obligations hereunder; provided, that, (i) such failure is not due to a Force Majeure Event affecting Purchaser or any Purchaser's Party, such failure is not due to the act or omission of Seller or any Seller's Party, including any breach by Seller or any Seller's Party of its obligations hereunder or any negligence or willful misconduct of Seller or any Seller's Party and (ii) the impact of such failure could not have been overcome or avoided by the reasonable due diligence and commercially reasonable efforts of Seller or any Seller's Party.

**"Purchaser's Metering System"** - means the system installed by Purchaser's Utility Provider to measure and record the amount of electricity supplied to Purchaser by such Utility Provider and any Excess Energy delivered to the grid.

**"Purchaser's Parties"** - means, collectively, Purchaser, its affiliates, agents, directors, officers, employees, members, tenants, licensees, contractors, vendors, concessionaires, visitors, invitees and other members of the general public lawfully visiting the Property for the intended use thereof.

**"Real Property Taxes"** - has the meaning set forth in Section 4.8.1.

**"Receiving Party"** - has the meaning set forth in the definition of Confidential Information herein.

**"Renewable Energy Credits"** or **"RECs"** - means any and all credits, reporting rights, claims, allowances, certificates, green tags, or other transferable indicia, including any emissions reduction credits and Environmental Attributes, such as CO<sub>2</sub> or other greenhouse gas emission reduction credits, associated with renewable energy generated at the Facility or an Added Facility that could qualify or do qualify for application toward compliance with any voluntary or mandatory local, state, federal or international renewable energy portfolio standard, green pricing program, renewable energy program, emission reduction program or reporting program, or other renewable energy or environmental mandate or objective, including Green-e.

**"Renewal Rate"** - means, as of the beginning of any Renewal Term, the Contract Energy Price applicable to the Renewal Term.

**"Renewal Term"** has the meaning set forth in Section 6.1.2.

**"Responding Party"** - has the meaning set forth in Section 18.2.1.

**"Rules"** - has the meaning set forth in Section 18.1.

**"Seller"** – means Cherry Street Asset Management Holdings, LLC, and any of its Affiliates, including any Affiliate it designates to perform any of its obligations under this Agreement.

**"Seller's Conditions Precedent"** – has the meaning set forth in Section 5.5.

**"Seller's Metering System"** – means the system installed by Seller, at Seller's sole risk, cost and expense, to measure and record the amount of Solar Energy delivered to Purchaser at the Point of Delivery. Seller's Metering System shall be capable of separately measuring Excess Energy so that Purchaser will be billed only for Consumed Energy.

**"Seller's Parties"** – means, collectively, Seller and all of its Affiliates, agents, directors, officers, employees, members, licensees, contractors, vendors and assigns, and Seller's contractors, Subcontractors, and invitees.

**"Seller's Work"** – has the meaning set forth in Section 5.4.1(i).

**"SNDA"** – has the meaning set forth in Section 4.6.2.

**"Solar Access License"** – has the meaning set forth in Section 3.2.1.

**"Solar Energy"** – means the generation of electricity produced by the Facility, an Added Facility, or a Facility Upgrade by converting sunlight into energy using photovoltaic cells.

**"Solar License Area"** – has the meaning set forth in Section 3.2.1.

**"Target Commercial Operation Date"** means the date by which Seller intends to achieve Commercial Operation of the Facility using all diligent good faith efforts.

**"Term"** – has the meaning set forth in Section 6.1.1.

**"Total System Production"** – shall mean the total Output in any Annual Period.

**"Transfer"** – has the meaning set forth in Section 4.6.1.

**"Use Rights"** – has the meaning set forth in Section 3.1.

**"Utility Provider"** – means Cartersville Electric System or such other utility provider, municipal electric authority or electric distribution company serving or connected to Purchaser's Electric System at the Facility Site and/or other portions of the Property.

**"Utility Provider-Caused Delay"** – means a Delay to the extent caused by any act or omission of the Utility Provider, including but not limited to any Delay in the interconnection approval process impacting Seller's ability to achieve final energization and Commercial Operation of the Facility; provided, that, (i) such failure is not due to the act or omission of Seller or any Seller's Party, including any breach by Seller or any Seller's Party of its obligations hereunder or any negligence or willful misconduct of Seller or any Seller's Party and (ii) the impact of such act or omission by Utility Provider could not have been overcome or avoided by the reasonable due diligence and commercially reasonable efforts of Seller or any Seller's Party.

**2. Rules of Interpretation.** Unless the Agreement otherwise indicates, the following rules shall govern interpretation of the Agreement's terms:

a. The singular includes the plural and vice versa.

b. "Hereof," "herein," "hereto" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement.

c. "Including," when used in connection with a listing of items, means such listing is illustrative only, and not a limitation on or exclusive listing of the items included within the prior reference.

d. "Section," "Article," "Appendix," and "Schedule" mean with reference to this Agreement. All such Schedules and Appendices are part of this Agreement.

e. If any index or publication referenced in this Agreement ceases to be published, each such reference shall be deemed a reference to a successor or alternate index or publication reasonably agreed to by the Parties.

f. Unless otherwise stated, a reference to a given agreement or instrument, and all schedules, exhibits, appendices and attachments thereto, is a reference to that agreement or instrument as modified, amended, supplemented and restated, and in effect from time to time.

g. Unless otherwise stated, any reference to any entity includes its permitted successors and assigns, and in the case of any Governmental Authority, any entity succeeding to its functions and capacities.

h. Whenever "consent" or "approval" is used, such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless the Agreement provides that such consent or approval is in the sole and absolute discretion of the consenting Party.

## **APPENDIX B – TERMS AND CONDITIONS**

### **ARTICLE 1: DEFINITIONS AND INTERPRETATIONS**

1.1 **Definitions.** All capitalized terms not otherwise defined, whether singular or plural, have the meanings set forth in Appendix A.

1.2 **Interpretation.** This Agreement shall be interpreted consistent with the rules set forth in Appendix A. In the event of conflict with any Schedule or Appendix, the terms of this Appendix B shall prevail.

### **ARTICLE 2: ACCESS AND USE**

2.1 **Access and Use.** Purchaser hereby grants Seller a fully paid up right to access and use the Facility Site in accordance with the terms and conditions of this Agreement and for the purposes set forth in this Section 2.2.

2.2 **Permitted Uses.** During the Term Seller shall have the right to do, or cause to be done, the following in accordance with this Agreement (collectively, the "Operations"):

- i. to construct, install and operate the Facility on the Facility Site;
- ii. to maintain, clean, repair, replace and dispose of part or all of the Facility;
- iii. to add or remove the Facility or any part thereof;
- iv. to install and maintain equipment necessary for remote monitoring of the Facility;
- v. to conduct in-person physical inspections of the Facility and Facility Site, of which the Seller shall provide an upfront notice of minimum three (3) Days to the Purchaser;
- vi. to perform upgrades and improvements to the Facility from time to time as the Parties may mutually agree with the least possible impact on the business and production site of the Purchaser; and
- vii. to perform all tasks necessary or appropriate, as reasonably determined by Seller in mutual agreement and consultation with the Purchaser, to carry out the activities set forth in this Agreement.

2.3 **Seller's Exercise of Rights.** Seller shall construct and install the Facility on the applicable Facility Site in accordance with the requirements of Article 5; provided, however, that such construction and installation, and all Operations thereafter: (i) shall be in strict compliance with this Agreement and all Applicable Laws; and (ii) shall not unreasonably interfere with Purchaser's use, operation, or maintenance of the Facility Site. The Seller shall coordinate with Purchaser to perform all construction, installation and maintenance works as much as possible outside the active production hours/days of the Purchaser.

2.4 **Utilities.** Purchaser shall provide existing and available utilities to the Facility Site in connection with Seller's construction, start-up, maintenance, repair, replacement and operation of the Facility.

2.5 **Notice of Condition.** At any time upon reasonable request by a Party, the other Party shall send a person to observe the condition of the Facility (during normal business hours except in the case of an Emergency) and report back to the requesting Party on such observations. In addition:

2.5.1 Each Party shall immediately notify the other of an Emergency relating to the Facility or Facility Site.

2.5.2 Purchaser shall notify Seller within twenty-four (24) hours of discovering any material malfunction of the Facility or known interruption in the supply of electric energy from the Facility.

2.5.3 Each Party shall immediately notify the other Party upon observing any damage to the Facility, the Facility Site or Purchaser's Electric System.

2.5.4 Each Party shall promptly notify the other Party if it becomes aware of any circumstances relating to the Facility, Facility Site or Purchaser's Electric System that creates an imminent risk of damage or injury to such Facility, Facility Site or Purchaser's Electric System or any person.

### **ARTICLE 3: GRANT OF LICENSES**

3.1 **Access License and Use Rights.** Subject to the terms and conditions of this Agreement, Purchaser grants Seller during the Initial Term and, if renewed, the Renewal Term, a nonexclusive license for access and use of the Facility Site on, under, over, and across the Property (each an "Access License Area"), for the purposes of designing, installing, inspecting, operating, maintaining, repairing, and removing the Facility on the applicable Facility Site, performing the Operations, and for achieving all the purposes set forth in this Agreement (the "Use Rights"); provided, however, that Seller's exercise of the Use Rights shall at all times be in accordance with any Facility Site-specific policies and procedures governing site access, safety or security as may be provided from time to time by Purchaser.

3.1.1 The Use Rights on any portion of an Access License Area other than the actual Facility are subject to the concurrent nonexclusive use of the Access License Area and other portions of the Property by Purchaser. Seller shall not cause any unreasonable interference with the normal and intended use of the Facility Site or adjacent property by Purchaser or Purchaser's Parties.

3.1.2 The Use Rights include the right of convenient parking, access, and ingress to and egress from the Facility on, over, and across the necessary and applicable portions of each Access License Area and access to solar panels and conduits to interconnect the Facility with the electric wiring at the applicable Facility Site as reasonably necessary for the purposes of designing, installing and removing the Facility. The Use Rights shall survive the termination of this Agreement solely for the purpose of removing and Decommissioning the Facility for such period as may be necessary, not to exceed 180 Days, following the expiration or termination of this Agreement.

3.1.3 The Access License granted by Purchaser has been agreed to by the Parties as shown in the Memorandum of License attached hereto as Appendix E. Seller and Purchaser agree to execute and record such Memorandum of License to evidence the Access License granted in this Section.

### **3.2 Solar Access License.**

3.2.1 Purchaser grants to Seller during the Term and, if renewed, the Renewal Term, a Solar Access License on, over and above the Facility Site and any designated portions of any other portion of the Property adjacent to the Facility Site and owned by Purchaser (each a "Solar License Area") for the free passage of solar radiation to the Facility.

3.2.2 Pursuant to the Solar Access Licenses, Purchaser shall not obstruct or allow any Purchaser Party or tenant or assignee of Purchaser or any Purchaser Party to obstruct, the passage of direct solar radiation across each Solar License Area to the solar modules comprising the Facility. Trees, landscaping, structures, and improvements located on the Solar License Area as of the Effective Date (as shown in the aerial photograph included in Appendix C) shall

be allowed to remain, and Seller may not require their removal, but Seller may request that existing trees and landscaping be pruned as may be reasonably requested to limit interference with each Solar License Area.

3.2.3 If Purchaser becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the insolation to any Solar License Area, Purchaser shall advise Seller of such information and reasonably cooperate with Seller on Seller's costs and expenses in implementing measures to preserve existing levels of insolation at the affected Solar License Area.

3.2.4 The Solar License granted by Purchaser has been agreed to by the Parties as shown in the Memorandum of License attached hereto as Appendix E. Seller and Purchaser agree to execute and record such Memorandum of License to evidence the Solar License granted in this Section.

#### **ARTICLE 4: TITLE, SECURITY, MAINTENANCE, AND TAXES**

##### **4.1 Title.**

4.1.1 **To Facility Site.** Purchaser represents and warrants to Seller that it owns or holds a leasehold or other possessory interest in the Facility Site subject to no liens or encumbrances as of the Effective Date except as set forth in Appendix F.

i. All alterations, additions or improvements made to the Facility Site by Purchaser (which shall not in any manner be construed to include any part of the Facility) shall remain the property of Purchaser.

ii. If reasonably required by Seller or Seller's title company, but at Seller's expense, Purchaser shall execute and deliver instruments and such other documents as Seller or Seller's title company may reasonably require to confirm Purchaser's interest in the Facility Site, in form and content reasonably acceptable to Purchaser.

4.1.2 **Title to Facility.** Purchaser acknowledges and agrees that Seller is the exclusive owner and operator of the Facility (including without limitation photovoltaic modules or panels, inverters, meters, wire, data monitoring equipment, and cabling), and all alterations, additions or improvements made by Seller thereto, and that no portion or component of the Facility is a part of, or fixture to, the Facility Site, notwithstanding the manner in which the Facility may be attached to any real property. The Facility shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

i. The Parties acknowledge and agree that no component of the Facility was custom-fabricated for use in connection with such Facility and that it is the express intention of the Parties that (x) neither the Facility nor any part thereof shall constitute fixtures and that (y) the agreements set forth in this Agreement are entered into and to be given full force and effect to the greatest extent permitted by Applicable Law notwithstanding any ruling by any court that the Facility constitutes fixtures.

ii. Purchaser agrees, at Seller's request, to (x) permit Seller to prominently label the Facility as Seller's personal property, (y) not to disturb, remove or obscure, or permit any person other than Seller to disturb, remove or obscure such labeling, and (z) to permit Seller to replace promptly any such labeling which may be disturbed, removed or obscured.

iii. Notwithstanding the foregoing, in the event Purchaser acquires the Facility pursuant to Section 6.3 hereof, or in the event Seller fails to Decommission the Facility at the

end of the Term or at such other time as is required by the terms of this Agreement, such Facility, at the option of Purchaser, may thereupon become the personal property of Purchaser without the requirement of any additional action or documentation of transfer, provided that if Purchaser requests that Seller execute a bill of sale or other similar documentation to evidence such transfer of title, then Seller will so execute such documentation in reasonable form and content. Seller shall assign all assignable warranties to Purchaser upon Purchaser's request in connection with a sale or transfer of the Facility to Purchaser.

##### **4.2 Liens.**

4.2.1 **Purchaser Liens.** Purchaser shall give effective notice of Seller's ownership of the Facility, and the Facility's status as personal property to all parties having an interest in or any mortgage, pledge, lien (including mechanics', labor or materialmen's liens), charge, security interest, or encumbrance of any nature (collectively, "**Liens**") upon the real property and fixtures that are part of the applicable Facility Site.

i. Purchaser shall not directly or indirectly allow, cause, create, incur, assume, or suffer to exist any Liens on or with respect to the Facility, or any interest therein, arising by, through or under Purchaser, any Purchaser Party, or any of its or their contractors or subcontractors ("**Purchaser Liens**").

ii. If Purchaser becomes aware of a Purchaser Lien on the Facility Site, Purchaser shall promptly give Seller written notice of such and shall, at its sole expense, promptly take such action as is necessary or appropriate to have such Purchaser Lien bonded off, discharged and removed, or otherwise take such actions to ensure said Purchaser Lien is not foreclosed upon.

iii. Purchaser shall indemnify Seller against all reasonable costs and expenses (including reasonable attorneys' fees) incurred as a result of third-party enforcement of any such Purchaser Lien. Notwithstanding the foregoing, nothing in this Section 4.2.1 shall impose any duty or obligation for Purchaser with respect to any "Seller Liens" (as defined in Section 4.2.2).

4.2.2 **Seller Liens.** Seller shall not directly or indirectly allow, cause, create, incur, assume or suffer to exist any Lien with respect to any Seller's Work performed by or on behalf of Seller, any Seller Party, or any of its or their contractors or Subcontractors, or otherwise arising by, through or under Seller or Seller Party ("**Seller Liens**"), on or with respect to the Facility Site, the Property or any interest therein, or any other asset of Purchaser, excluding Seller's interests created pursuant to this Agreement, including, without limitation, any Lien arising from or relating to the construction, ownership, maintenance or operation of the Facility by Seller.

i. If Seller becomes aware of a Seller Lien on the Facility Site or any other portion of the Property, Seller shall promptly give Purchaser written notice of such and shall, at its sole expense, promptly take such action as is necessary or appropriate to have such Seller Lien discharged and removed.

ii. Seller shall defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing any such Seller Lien. Notwithstanding the foregoing, nothing in this Section 4.2.2 shall impose any duty or obligation for Seller with respect to any "**Purchaser Liens**" (as defined in Section 4.2.1).

4.2.3 **Discharge and Removal of Liens by Other Party.** Upon the failure of the applicable Party to promptly discharge, remove or cause to be discharged or removed a lien required to be discharged or removed under this Section 4.2,

or else promptly to provide a bond in an amount and from a surety acceptable to the other Party to protect against such Lien, in each case, within 30 Days after the applicable Party becomes aware of the existence thereof, the other Party may, but shall not be obligated to, pay, discharge or obtain a bond or security for such Lien and, upon such payment, discharge or posting of security therefor, shall be entitled immediately to recover from the applicable Party the amount thereof, together with all expenses incurred by the Party discharging the Lien in connection with such payment or discharge, or to set off all such amounts against any amounts owed by the Party discharging the Lien to the other Party hereunder.

**4.3 Quiet Enjoyment.** Subject to the terms of this Agreement:

i. Seller shall enjoy quiet and peaceful use, enjoyment, and possession of its interests in the Facility Site, free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Seller's quiet enjoyment thereof, throughout the Term of this Agreement; and

ii. neither Purchaser, any Purchaser Party, nor any person claiming by, through or under Purchaser or any Purchaser Party shall disturb Seller's quiet and peaceful use, enjoyment, and possession of its interests in the Facility Site.

iii. Purchaser agrees that this Agreement and the rights granted in this Agreement shall run with the land and survive any transfer of the Purchaser's interest in the Facility Site.

**4.4 No Interference by Purchaser.** Purchaser hereby agrees, for itself, its agents, employees, representatives, successors, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may have a reasonable likelihood of causing damage, impairing, or otherwise adversely affecting the Facility or its functions, including without limitation activities that may adversely affect such Facility's exposure to sunlight.

**4.5 No Interference by Seller.** Seller hereby agrees for itself and its agents, employees, representatives, successors, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may have a reasonable likelihood of causing damage, impairing, or otherwise materially adversely affecting the Facility Site or the Property or their functions. Seller and Seller's Parties shall not take any action that may materially impair access by Purchaser or Purchaser's Parties to the Facility Site or other portions of the Property, subject to the terms of this Agreement.

**4.6 Transfer of Property; Subordination to Mortgage.**

4.6.1 Purchaser shall give Seller at least thirty (30) Days prior notice of any proposed sale, ground lease, or Mortgage of its interest in the Facility Site or any portion thereof (a "Transfer").

i. Any such notice shall identify the transferee, the portion of the Facility Site to be transferred, and the proposed date of the Transfer.

ii. Seller's consent shall not be required with respect to the consummation of any such Transfer by Purchaser provided that for any Transfer other than a Mortgage, the buyer, transferee, ground lessee or assignee, as applicable, shall agree in writing to be bound by the terms of this Agreement and to assume the obligations of Purchaser thereunder.

iii. Notwithstanding the foregoing, no such Transfer shall attach to the Facility sited on the transferred Facility Site or otherwise affect the ownership right of Seller in and to the

Facility.

4.6.2 In the event Purchaser has executed as of the Effective Date, or intends to execute in the future any Mortgage in favor of a Mortgagee, Purchaser and Seller shall use good faith commercially reasonable efforts to cause Seller and such Mortgagee to execute and deliver a subordination, non-disturbance and attornment agreement ("SNDA") in a form substantially similar to Appendix G or such other form required by the Mortgagee, pursuant to which Seller shall agree to subordinate its interest in the Facility Site provided that such Mortgagee, among other things:

i. shall acknowledge and consent to the Seller's rights in the Facility subject to the terms of this Agreement;

ii. shall acknowledge that the Mortgagee has no interest in the Facility and shall not gain any interest in the Facility by virtue of the Parties' performance or breach of this Agreement or otherwise; and

iii. shall agree that if such Mortgagee succeeds to Purchaser's interest in the Facility Site, the terms and conditions of this Agreement shall bind such Mortgagee and continue in full force and effect, according to the terms thereof provided that Seller duly performs its obligations under the terms of this Agreement.

**4.6.3** Purchaser and Seller acknowledge and agree that:

i. the Property is currently subject to a Mortgage(s);

ii. the SNDA attached as Appendix G and made a part hereof, is in form reasonably acceptable to Seller for the purposes of the foregoing Section 4.6.2.

**4.7 Property and Facility Security, Health and Safety.**

4.7.1 **Facility Security.** Purchaser will provide security for the Facility Site and Facility to the extent of its normal security procedures, practices, and policies that apply to all of the Property, including restricting access to the area on which the Facility is located and providing monitoring of the Facility Site's security alarms. Purchaser shall maintain the Facility Site in a structurally sound and safe condition consistent with all Applicable Laws.

4.7.2 **Additional Security.** In addition to the security provided by Purchaser, Seller may at Seller's expense install any security measures that Seller determines are or may be reasonably necessary for the Facility; provided, however, that any such additional security measures shall be subject to Purchaser's advance written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Such measures may, but will not necessarily, include warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage to or destruction of the Facility or injury or damage to persons or property resulting from the Facility and the Operations, as long as such measures do not unreasonably interfere with the operation of the Facility Site.

**4.8 Taxes.**

4.8.1 Purchaser shall pay when due all real property taxes and assessments levied against the Facility Site by any Governmental Authority (collectively, "Real Property Taxes"). If Purchaser is assessed any taxes related to the existence of the Facility on the Property, Purchaser shall immediately notify Seller. Purchaser and Seller shall cooperate in contesting such assessment; provided, however, that Purchaser shall pay such taxes to avoid any penalties on such assessments subject to reimbursement by Seller. If, after resolution of the matter, a tax

is imposed upon Purchaser related to the improvement of real property by the existence of the Facility on the Property, Seller shall reimburse Purchaser for all such imposed taxes, as well as all penalties and costs that are borne by Purchaser, including, if applicable, any legal fees that are necessary to contest the assessment.

4.8.2 Seller represents and warrants that there are not currently ad valorem or other personal property taxes and assessments levied against the Facility by any Governmental Authority, and if during the Term of this Agreement any such taxes become due and payable by Seller, they will be added to the Contract Energy Price.

4.8.3 Purchaser shall be responsible for any taxes on the generation, sale, delivery, or consumption of Solar Energy produced by the Facility.

4.8.4 Neither Party shall be obligated for any taxes payable by or assessed against the other Party solely based on or related to such Party's overall income or revenues.

#### **ARTICLE 5: DESIGN AND CONSTRUCTION**

5.1 **Project.** The Project consists of the design, development and installation of one or more solar powered electric generation Facilities with an initial total capability of producing up to approximately 1,030 kW-DC of electric power at the Facility Site(s).

#### **5.2 Design Phase.**

5.2.1 Seller shall have sole responsibility for the design of the Facility in accordance with the Final Design Package prepared by Seller and all related metering and sub-metering equipment. All such design shall be in accordance with all Prudent Industry Practices and shall comply with Applicable Laws, as well as with Interconnection Agreements and other requirements of the Utility Provider. The Final Design Package for the Facility shall include proposed Final Construction Plans and a proposed Final Construction Schedule. The Final Design Package shall be subject to Purchaser's prior written approval, with such approval not to be unreasonably withheld, conditioned, or delayed.

5.2.2 Seller will conduct, at its sole risk, cost and expense, any necessary evaluations of structural suitability and other characteristics of the Facility Site to determine whether such Facility Site is suitable for the Facility to be installed on such Facility Site. Notwithstanding the foregoing, Purchaser acknowledges and agrees that the Contract Energy Price is premised upon certain assumptions of Seller regarding the size and type of solar array that is feasible at the Facility Site, which assumptions are in turn based upon Seller's site surveys and feasibility assessments conducted prior to the Effective Date and during the Design Phase. Accordingly, to the maximum extent practicable, Purchaser shall preserve Seller's access to construct and interconnect the Facility in the locations established during and prior to the Design Phase.

5.2.3 Seller shall have until sixty (60) Days from the Effective Date (or for an Added Facility, from the effective date of the Addendum) to determine in its reasonable discretion whether the Facility Site is unsuitable for the Facility. If by the foregoing deadline Seller determines in its reasonable discretion that the Facility Site is unsuitable for the Facility, then either Party shall have the right to terminate this Agreement effective immediately upon written notice to the other Party, and without any liability to such Party arising from such termination, and upon such termination, this Agreement shall be of no further force or effect.

#### **5.3 Consents and Permits**

5.3.1 Seller will use all commercially reasonable efforts to obtain, at its sole risk, cost and expense, any and all Consents and Permits that Seller is required to obtain for the operation, maintenance, testing and any necessary modification of the Facility.

5.3.2 Purchaser will use all commercially reasonable efforts to obtain, at its sole expense any and all Consents and Permits that Purchaser is required to obtain for the purchase of Solar Energy from Seller pursuant to this Agreement.

5.3.3 Seller will facilitate, at Seller's sole risk, cost and expense, the execution by the Utility Provider and Seller or Purchaser, as applicable, of all necessary Interconnection Agreements with the participating Utility Provider for the interconnection of the Facility as necessary for Seller's Work (as defined in Section 5.4.1) and the Operations, including, without limitation, the ownership, construction, testing, operation, modification, and maintenance of the Facility for the delivery of Solar Energy to Purchaser.

5.3.4 Each Party will support and cooperate with, and not oppose, obstruct, or otherwise interfere in any way with the efforts of the other Party or its Affiliates to obtain all Consents that are the responsibility of the other Party.

#### **5.4 Development and Construction.**

##### **5.4.1 Construction.**

i. At Seller's sole risk, cost and expense, Seller will complete the Project and cause the Facility to be engineered, installed and constructed substantially in accordance with the Final Design Package, all Applicable Laws, Prudent Industry Practices, any applicable Interconnection Agreements, and any other applicable provisions of this Agreement (collectively, "Seller's Work").

ii. All construction, including but not limited to any site preparation, landscaping or utility installation, shall be performed only by Seller or by independent contractors with demonstrated competence and experience in the construction of components of photovoltaic systems and duly licensed under the laws of the State of Georgia, and pursuant to written contracts with Seller or its Contractors.

iii. Seller will promptly repair all damages to the Property (and any buildings or other improvements thereon) resulting from Seller's activities, including but not limited to the installation, maintenance, repair, replacement, or removal of any part of the Facility. Such repairs shall include, without limitation, the repair of any roof leaks or other roof damage caused by Seller's Work and the mitigation of any water sheeting, pooling or leaking resulting from Seller's Work on the Facility Site.

iv. Seller expressly acknowledges and agrees that Seller's Work shall be performed using such contractors and construction methods (including, without limitation, coordinating any necessary approvals from the manufacturer and/or warrantor of any roof, if applicable) so as to not result in the invalidation of any roof warranties applicable to Purchaser's buildings located on the Facility Site.

5.4.2 **Commercial Operation.** Seller shall use all diligent and commercially reasonable efforts to achieve Commercial Operation of the Facility by the Commercial Operation Deadline as set forth in the Final Construction Schedule. The Commercial Operation Deadline and the Longstop Commercial Operation Date shall each be extended



on a day-for-day basis for any Delay solely caused by a Force Majeure Event, Utility Provider-Caused Delay or Purchaser Fault. If the Commercial Operation Date has not occurred for the Facility on or before the applicable Commercial Operation Deadline or any extension thereof for any reason other than a Force Majeure Event, Utility Provider-Caused Delay or Purchaser Fault, then the Parties shall meet in good faith to determine whether: (i) the Commercial Operation Deadline and/or the Longstop Commercial Operation Date should be extended; (ii) Seller should remove or relocate all materials and supplies from any laydown area or minimize the space occupied by such materials and supplies; or (iii) the Facility should be removed from this Agreement. Such determination shall consider the causes for such delay, the then-applicable state of completion of the Facility and the reasonable likelihood of the Facility achieving Commercial Operation within a reasonably short period of extended time. Purchaser may unilaterally make such determination if such delay is unreasonably impacting its or Purchaser's Parties' use of the Facility Site. If the Facility is removed pursuant to this Section 5.4.2, this Agreement shall terminate and have no further force or effect with respect to such Facility only, and the Parties shall have no further liability to one another with respect to such Facility. The Facility shall be deemed to have achieved "Commercial Operation" when Seller certifies to Purchaser that:

- i. the Facility has been completely installed, is mechanically and electrically sound, and has been tested and adjusted to the extent necessary;
- ii. the Facility is connected to Purchaser's Electrical System;
- iii. the Facility is functionally capable of producing Output and delivering such Output through the Metering System to the Point of Delivery on a reliable basis in accordance with Prudent Industry Practices; and
- iv. Seller has made formal notification to the Utility Provider that the Facility is ready and available for testing by the Utility Provider.

**5.4.3 Estimated Annual Production Notice; Document Delivery.** Upon achieving Commercial Operation of the Facility, Seller shall notify Purchaser in writing of the amount of Output that Seller estimates will be produced by the Facility during the first year of the Term and each Annual Period thereafter ("**Estimated Annual Production Notice**") and shall also deliver to Purchaser copies of final as-built Plans and all executed Interconnection Agreements.

**5.4.4 Inspections.** Upon reasonable prior advance notice to Seller, representatives of Purchaser shall be entitled to inspect the construction, maintenance, operation and testing of the Facility. Seller shall cooperate in such physical inspections of the Facility as may be reasonably required by Purchaser provided that: (i) such inspections shall not materially interfere with the testing or operations of the Facility, and (ii) Purchaser complies with Seller's reasonable policies and procedures applicable to the Facility, including those with respect to safety. Purchaser's technical review and inspection of the Facility shall not be construed as endorsing the design or construction thereof or as any warranty of the safety, durability or reliability of the Facility.

**5.5 Conditions Precedent to Seller's Obligations.** The following are conditions precedent of this Agreement that, if not met or waived by Seller prior to the commencement of Seller's Work, will, in Seller's sole discretion, permit Seller to terminate this Agreement prior to commencement of Seller's Work ("**Seller's Conditions Precedent**"):

5.5.1 For roof-mounted systems, the structural integrity of the roof, as is, is sufficient to accommodate the Facility without material additional costs;

5.5.2 There is a suitable electrical interconnection point of sufficient capacity to accommodate the Facility as designed without material additional cost located within 300 feet of the planned location of the Facility;

5.5.3 Purchaser and Purchaser's Parties shall have preserved the locations necessary for the siting of the Facility and its connection to Purchaser's Electric System as established during the Design Phase.

5.5.4 All necessary governmental filings or applications relating to the operation of the Facility shall have been completed and approved as applicable;

5.5.5 All Consents and Permits necessary for Seller to perform its obligations as to the Facility under this Agreement shall have been obtained as set forth in the Final Construction Schedule;

5.5.6 Seller or Purchaser, as applicable, shall have entered into all Interconnection Agreements required for the Facility and shall have received all third-party Consents and Permits necessary in order to perform its obligations as to such Facility hereunder; and

5.5.7 No Change in Law has occurred that has or will have a material adverse effect on Seller's rights, entitlement, obligations or cost under this Agreement, as set forth in Article 20.

**5.6 Conditions Precedent to Purchaser's Obligations.** The following are conditions precedent of this Agreement that, if not met or waived by Purchaser prior to the commencement of Seller's Work, will, in Purchaser's sole discretion, permit Purchaser to terminate this Agreement ("**Purchaser's Conditions Precedent**"):

5.6.1 Seller or Purchaser, as applicable, shall have entered into any Interconnection Agreement required for the Facility, and shall have received all third-party Consents and Permits necessary to perform its obligations as to the Facility under this Agreement.

5.6.2 All necessary governmental filings or applications relating to the operation of the Facility shall have been completed and approved as applicable.

5.6.3 Seller shall have entered into any applicable SNDA required by any Mortgagee of Purchaser which Seller has approved.

5.6.4 Seller shall have delivered to Purchaser all items required to be delivered to such Mortgagee as and when required under the terms of any applicable SNDA.

5.6.5 Purchaser shall have obtained all Consents required to be obtained by Purchaser in connection with its purchase of Solar Energy from Seller pursuant to this Agreement with respect to the Facility on or before the Commercial Operation Date.

5.6.6 No Change in Law has occurred that has or will have a material adverse effect on Purchaser's rights, entitlement, obligations or cost under this Agreement, as set forth in Article 20.

**5.7 Environmental Attributes; Incentives.**

5.7.1 **Environmental Attributes.** During the Term, Purchaser will retain right and ownership of all Renewable Energy Credits ("**RECs**") and any other Environmental

Attributes associated with the Solar Energy to make use of at Purchaser's discretion.

5.7.2 **Incentives.** Purchaser understands and agrees that any and all Incentives available or awarded as a result of construction, ownership or operation of the Facility are the property of and for the benefit of Seller, usable at its sole discretion. Seller shall have the exclusive right to enjoy and use all such benefits, whether such benefits exist now or in the future. Purchaser agrees to refrain from entering into any agreement with Purchaser's electric service provider that would entitle the electric service provider to claim any such benefits. Purchaser agrees to reasonably cooperate with Seller so that Seller may claim any Incentives from the Facility, including but not limited to filing registrations and/or applications for rebates from federal, state or local governments or a utility for the benefit of Seller, at Seller's sole risk, cost and expense.

## ARTICLE 6: TERM AND TERMINATION

### 6.1 **Term and Renewal Terms(s).**

6.1.1 **Term.** This Agreement shall become effective on the Effective Date and shall remain in full force and effect until the 30<sup>th</sup> anniversary of the Commencement Date ("**Initial Term**"); provided, however, if any Added Facility is added pursuant to Section 19.7.2, or if a Facility Upgrade is made pursuant to Section 19.7.3, this Agreement shall remain in full force and effect until the 30<sup>th</sup> anniversary of the Commencement Date of the last Added Facility or Facility Upgrade, as applicable, subject to the early termination provisions set forth herein. The Initial Term and all subsequent Renewal Terms (as defined in Section 6.1.2), if any, are referred to collectively as the "**Term**". The date on which this Agreement terminates by reason of expiration of the then applicable Term is hereinafter referred to as the "**Expiration Date**". Any other date on which this Agreement terminates in accordance with the terms hereof is hereinafter referred to as the "**Early Termination Date**".

6.1.2 **Renewal Term(s).** The Term may be extended for up to two (2) consecutive periods of five years each (each such extension, a "**Renewal Term**") with each such Renewal Term expiring on the applicable anniversary of the Commencement Date. No fewer than 180 Days before the end of the Initial Term or any Renewal Term, as applicable, Purchaser may provide written notice its desire to extend the Term for an additional five (5) years. For each Renewal Term, the Parties shall confer and agree upon a schedule for the Contract Energy Price, Annual Escalation Rate, and Early Termination Fee.

### 6.2 **Early Termination by Purchaser.**

6.2.1 Beginning on the date that is no earlier than five (5) years after the Commercial Operation Date of the Facility, Purchaser may terminate this Agreement whenever Purchaser shall determine that such early termination is in the best interest of Purchaser. Any such termination shall be effected by delivery to Seller of a written notice (an "**Early Termination Notice**") specifying the extent to which performance of Seller's Work and/or operation of the Facility is to be terminated and the date when such termination becomes effective, such Early Termination Date not to be earlier than forty-five (45) Days after the date of the Notice of Termination. For the avoidance of doubt, the Parties acknowledge and agree that a Transfer permitted under Section 4.6 hereof shall not be considered an early termination for purposes of this Section 6.2, and therefore, no Early Termination Fee shall be due by Purchaser to Seller in the event of any such permitted Transfer.

6.2.2 After receipt of a Notice of Termination, and except as otherwise directed by Purchaser, Seller shall:

- i. stop Seller's Work and/or the operation of the Facility or Facilities as specified in the Notice of Termination;
- ii. place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of Seller's Work and/or the operation of the Facilities under the Agreement that is not terminated;
- iii. terminate all orders and subcontracts to the extent they relate to performance of Seller's Work terminated by the Notice of Termination;
- iv. assign to Purchaser or its Affiliate, in the manner, at the times, and to the extent directed by Purchaser, all of the right, title, and interest of Seller under the orders and subcontracts so terminated, in which case Purchaser shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

6.2.3 In the event of any termination pursuant to this Section 6.2, then (a) Seller shall be entitled to receive, as liquidated damages, the Early Termination Fee applicable to the Facility and (b) Purchaser shall be entitled, in its discretion, either to exercise the Purchase Option set forth in Section 6.3.1(ii) (to be exercised by delivering a second written notice no later than 30 Days from the date of the Early Termination Notice) or to require Seller Decommission the Facility (within 120 Days of the effective date of such Early Termination Notice). Any such Decommissioning pursuant to this Section 6.2 shall be at Purchaser's sole cost and expense (except for any cost to repair damage to the Facility Site caused by Seller's negligence during such Decommissioning, which shall be at Seller's sole risk, cost and expense).

### 6.3 **Decommissioning; Purchase Option.**

6.3.1 At the end of the Term or any Renewal Term, so long as a Purchaser Default shall not have occurred and be continuing, Purchaser shall have the option, exercisable by written notice to Seller, to:

- i. require Seller to Decommission the Facility at Seller's risk, cost and expense; or
- ii. purchase the Facility for Fair Market Value, with title to the Facility to be transferred in accordance with Section 4.1.2(ii). Purchaser shall give written notice of its decision to exercise either option no later than 60 Days prior to the expiration of the Term or Renewal Term. If the Parties are not able to agree upon the Fair Market Value of the Facility, a third-party independent appraiser will be retained at Purchaser's expense to compute such Fair Market Value, and if Purchaser still desires to purchase the Facility, it shall do so for the Fair Market Value determined by said appraiser within 30 Days of the receipt by Purchaser and Seller of the appraiser's determination.

6.3.2 If Purchaser does not exercise its option to purchase the Facility at the end of the Term or Renewal Term, Seller shall remove the Facility from the Facility Site at Seller's risk, cost and expense within 120 Days of the expiration of the Term or Renewal Term. Seller shall make any repairs to the Facility Site necessary to repair any adverse impact such removal directly causes to the Facility Site.

6.4 **Survival of Rights.** Upon termination or expiration of this Agreement, the Parties shall be relieved of their obligations under this Agreement except for the following obligations that shall survive termination or expiration: (i) the obligation to pay each other all amounts then owed and not paid under this

Agreement; (ii) Seller's obligation to properly Decommission, remove, and dispose of the Facility or components of Seller's Work pursuant to Article 13; and (iii) any other obligations that the Agreement specifies shall survive termination or expiration.

## **ARTICLE 7: OPERATION AND ACCESS**

### **7.1 General Standards.**

7.1.1 During the Term, Seller shall have the sole responsibility, at its sole expense: (i) to manage, control, operate and maintain (or cause others to manage, control, operate and maintain) the Facility in accordance with Prudent Industry Practices, all Applicable Laws and the other requirements set forth in this Agreement; (ii) to diligently seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, any and all Consents; and (iii) to employ at the Facility all safety devices and safety practices required by Prudent Industry Practices.

7.1.2 Seller shall coordinate all planned maintenance with Purchaser to avoid material interference with the normal use of the Facility Site by Purchaser and Purchaser's Parties in the ordinary course of business.

7.2 **Facility Access.** Upon reasonable notice (or immediately, in the event of an Emergency), Purchaser or Purchaser's Parties shall have access to the Facility to: (i) inspect such Facility and inspect, maintain, and test meters and other equipment; (ii) monitor or measure energy generated by such Facility; and (iii) take such other action as may be reasonably necessary to exercise Purchaser's rights under this Agreement.

7.3 **Emergencies.** In the event of an Emergency, Purchaser and Seller, as applicable, shall take such immediate action as may be reasonable and necessary to prevent, avoid and mitigate injury, damage or loss to the Facility, Facility Site and/or the Property, and any interruption, reduction or disruption of its proper operation, and shall, as soon as practicable, report any such incident, including such Party's response thereto, to the other Party.

### **7.4 Maintenance.**

7.4.1 **Purchaser Obligations.** During the Term Purchaser shall, without interfering with the operation of the Facility:

- i. maintain the Facility Site in structurally sound and safe condition and repair;
- ii. use commercially reasonable efforts to maintain Purchaser's Electric System in good condition and repair so as to be able to receive and use the electric energy generated by the Facility;
- iii. give Seller prompt notice of any damage to or defective condition in any part or appurtenance of the Facility or Facility Site of which it becomes aware;
- iv. exercise reasonable care to warn those lawfully on the Facility and/or the Facility Site of existing dangers known to Purchaser; and
- v. maintain its connection and service contract(s) with its Utility Provider, or any successors thereto, so that Purchaser can, upon any suspension or interruption of delivery of electric energy from the Facility, provide the Facility Site with its full requirements for electric energy.

7.4.2 **Seller Obligations.** During the Term, Seller shall, at Seller's sole risk and cost and without unreasonably interfering with the normal operation of the Facility Site and the use thereof by Purchaser and Purchaser's Parties in the

ordinary course of business:

- i. monitor the operation of the Facility;
- ii. maintain the Facility in good working condition and all areas of the Facility Site used by Seller in the Operations or in performing Seller's Work in good clean condition and repair, all in accordance with Prudent Industry Practices and all Applicable Laws, with Seller coordinating all planned maintenance with Purchaser, provided, however, that any repair or maintenance costs incurred by Seller as a result of Purchaser's or Purchaser's Parties' negligence or breach of Purchaser's obligations hereunder shall be reimbursed by Purchaser;
- iii. promptly repair or replace any defective panels, modules or other equipment comprising the Facility as needed to maintain the Facility in good working condition in accordance with Prudent Industry Practices;
- iv. give Purchaser prompt notice of any damage to or defective condition in any part or appurtenance of the Facility or Facility Site of which Seller becomes aware;
- v. exercise reasonable care to warn those lawfully on the Facility and/or the Facility Site of existing dangers of which Seller becomes aware; and
- vi. promptly repair any damage to the Facility Site or any portion of the Property caused by or resulting from Seller's Work or otherwise resulting from the construction, installation, operation, maintenance, and Decommissioning of the Facility, including, without limitation, damage caused by water leakage as a result thereof. Notwithstanding the foregoing, if any such repair, maintenance, damage, or defective condition is caused by or arises out of the negligence or willful misconduct of Purchaser or Purchaser's Parties, then Purchaser shall be responsible for the costs and expenses thereof.

7.5 **Availability of Records.** Seller shall keep complete and accurate records with respect to the Seller's Work and all Operations, and all other data for the purpose of proper administration of this Agreement in accordance with the following guidelines:

7.5.1 All such records shall be maintained for a minimum of seven (7) years after the creation of such record or data and for any additional period required by Applicable Law. In the event Seller intends to dispose of or destroy any such records after such seven-year period, Seller shall provide Purchaser with thirty (30) Days prior written notice.

7.5.2 Upon reasonable advance notice, either Party shall have the right to examine the records and data of the other Party to facilitate any determination that such Party is required or permitted to make under this Agreement.

7.5.3 Any information provided by either Party pursuant to this Section 7.5 shall be subject to the confidentiality provisions set forth in Section 19.13.

## **ARTICLE 8: INTERCONNECTION AND METERING**

### **8.1 Interconnection.**

8.1.1 Seller shall (i) request interconnection and, if required, enter into an Interconnection Study Agreement with the Utility Provider as soon as reasonably practicable following completion of the Final Design Package; and (ii) enter or facilitate Purchaser's entry into an Interconnection Agreement with the Utility Provider before Commercial Operation of the Facility. The Interconnection Agreement shall be maintained throughout the Term of this Agreement. If the Utility Provider requires interconnection upgrades that materially increase

Seller's costs beyond those assumed and accounted for in Seller's proposal to Purchaser, Seller shall notify Purchaser of such issue. Seller and Purchaser shall attempt in good faith to reach an agreement as to how to handle such increased interconnection costs within fourteen (14) Days after such notice; if, within 14 Days after Seller's notice the Parties are unable to reach a resolution, the Parties will resolve their dispute in accordance with Section 18.2 of this Agreement.

8.1.2 Seller shall promptly provide a copy of, and any amendments to, such Interconnection Agreement to Purchaser in accordance with the Notice provisions of Section 19.8.

8.1.3 Purchaser shall not be responsible under this Agreement for any costs and expenses incurred in connection with the design, construction, installation, and maintenance of the Interconnection Facilities. Seller is responsible for determining all transmission and/or distribution-related rules, practices and policies with which it must comply.

8.1.4 Unless this Agreement is terminated by Seller pursuant to Section 8.1.1, Seller shall undertake commercially reasonable efforts to enter into or facilitate Purchaser's entry into an Interconnection Agreement with the appropriate Utility Provider before the Target Commercial Operation Date. The Interconnection Agreement shall be maintained by Seller throughout the Term of this Agreement.

## 8.2 Metering.

8.2.1 At Seller's sole risk, cost and expense, Seller shall ensure that Seller's Metering System is designed, located, constructed, installed, owned, operated and maintained in accordance with Prudent Industry Practices in order to measure and record the amount of Solar Energy delivered from the Facility to the Point of Delivery. Seller shall read each meter at the end of each calendar month and record the Output delivered to Purchaser.

8.2.2 Seller will provide to Purchaser web-based access to monitor the Output from the Facility, and upon written request, Seller otherwise will make available to Purchaser the records from such meters.

8.2.3 Purchaser may, at its own cost, install additional meters or other such facilities, equipment or devices on Purchaser's side of the Point of Delivery as Purchaser deems necessary or appropriate to monitor the measurements of the Metering System; provided, however, that in all cases Seller will be entitled to base its invoiced amounts solely by reference to its own Metering System.

8.2.4 The Metering System shall have accuracy established in accordance with the manufacturer's written instructions and shall conform to Prudent Industry Practices. Seller shall inspect its meters at least annually and test them in accordance with the manufacturer's written recommendations. Seller shall be responsible for all costs and expenses incurred in connection with such inspections or tests.

8.2.5 If Seller's Metering System or any component thereof is found to be defective or inaccurate, it shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by Seller at Seller's sole risk, costs and expense. In addition, if the measurement made by Seller's metering device is found upon testing to vary by more than one percent (1%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of energy made by the Metering System during:

i. the actual period when inaccurate measurements were made by Seller's Metering System, if that period can be determined to the mutual satisfaction of the Parties; or

ii. if such actual period cannot be determined to the mutual satisfaction of the Parties, then a period equal to one-half of the period from the later of the date of the last previous test confirming accurate metering or the date the meter was placed into service ("**Adjustment Period**").

8.2.6 Within thirty (30) Days after the determination of the amount of any adjustment, Purchaser shall pay Seller any additional amounts then due for deliveries of Solar Energy during the Adjustment Period or Purchaser shall be entitled to a credit against any subsequent payments for Solar Energy, as the case may be.

8.2.7 Seller shall provide Purchaser with reasonable advance written notice of, and Purchaser and its representatives shall be entitled to be present at, any test, inspection, maintenance, adjustments and replacement of any part of Seller's Metering System relating to obligations under this Agreement.

## **ARTICLE 9: PAYMENT BASED ON AMOUNT OF CONSUMED ENERGY**

9.1 **Testing and Test Energy.** Seller shall not commence initial deliveries of Solar Energy to the Point of Delivery without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed.

9.1.1 Prior to the Commercial Operation Date, Seller shall test the Facility and implement start-up procedures. Purchaser shall make payments to Seller based on Solar Energy produced by Seller during testing and start-up procedures at such times and under conditions acceptable to Purchaser and Seller at the Contract Energy Price.

9.1.2 Seller agrees to notify Purchaser in writing within three (3) Days after the commencement of delivery of such test energy to the Point of Delivery. Representatives of Purchaser shall have the right to be present during any such testing.

9.1.3 Seller shall provide Purchaser not less than fourteen (14) Days written notice before any testing to establish the Commercial Operation Date.

9.2 **Energy Deliveries; Payment.** During the Term and any Renewal Term, Seller agrees to deliver to the Point of Delivery, and Purchaser agrees to receive at the Point of Delivery all of the Solar Energy generated by the Facility and make payments to Seller based upon the amount of kilowatt-hours (kWh) so delivered multiplied by the applicable Contract Energy Price. Notwithstanding the foregoing, the Parties acknowledge and agree that Seller sized the Facility to appropriately contribute to (but not fully) address Purchaser's on-site electricity needs with minimal export of Solar Energy to the grid. A material assumption underlying this Agreement is that such Excess Energy will not exceed five percent (5%) of the Total System Production in any Annual Period and that Total System Production will not fall below ninety percent (90%) of the Facility production estimates set forth in the Estimated Annual Production Notice (a "**Production Shortfall**"). Accordingly, to the extent that in any Annual Period there is Excess Energy above such five-percent threshold (an "**Excess Energy Overage**") or a Production Shortfall, the Parties shall within sixty (60) Days of the close of such Annual Period meet (by means mutually agreed upon by the Parties) in good faith to discuss potential amendments to this Agreement or such other mutually agreeable resolution as may be necessary to meet

the Parties' expectations regarding Facility production and consumption (the "**Annual Reconciliation**"), including whether Purchaser may be entitled to an Excess Energy Credit or other form of reimbursement from Seller. As part of any such Annual Reconciliation, the Parties shall consider the extent of the Excess Energy Overage or Production Shortfall, the total compensation received by Purchaser from its Utility Provider for Excess Energy delivered to the grid during such Annual Period, and any such other information as the Parties may, in good faith, deem relevant. In the event the Parties are unable to arrive at a mutually agreeable resolution, the Parties shall follow the procedures for informal dispute resolution set forth in Sections 18.2.1 and 18.2.2 hereof. In the event such informal dispute resolution efforts are unsuccessful, either Party may terminate this Agreement without further liability except for the costs of Decommissioning the Facility, which shall be borne by the terminating Party, by providing one hundred and eighty (180) days' advance written notice of such termination. For avoidance of doubt, the responsibility for Decommissioning the Facility shall in all cases remain with Seller, including instances where Purchaser is the terminating Party and bears the costs of such Decommissioning. In any Annual Reconciliation, the Parties shall exclude from consideration any Excess Energy Overage or Production Shortfall resulting during or from a Force Majeure Event declared by either Party pursuant to Article 17.

### 9.3 **Estimated Production.**

9.3.1 If the Facility is capable of producing Solar Energy and/or delivering Solar Energy to the Point of Delivery but Solar Energy is not produced and/or delivered as a result of action or failure to act by Purchaser, including action or failure to act that reduces the Output or allows shading of such Facility, then Seller shall be entitled to reasonably estimate the amount of Solar Energy that would have been produced and/or delivered to the Point of Delivery ("**Estimated Production**") and consider such Estimated Production as actual production.

9.3.2 If applicable, the invoice for Monthly Energy-Based Payment shall include Estimated Production in the determination of kWh delivered to the Point of Delivery and in the calculation of the Monthly Energy-Based Payment, and Purchaser agrees to pay such amounts in accordance with the provisions of Article 11.

9.3.3 During the first Annual Period, Estimated Production will be based on Seller's production predictions in the Estimated Production Notice provided upon Commercial Operation pursuant to Section 5.4.3. Thereafter, Estimated Production will be based on Consumed Energy for that Month in the prior Annual Period.

9.3.4 Purchaser will not be billed for Estimated Production when the Facility is not producing and/or delivering Solar Energy due to (i) Seller's action or failure to act; (ii) grid failure or power outages caused by someone other than Purchaser; or (iii) a Force Majeure Event.

9.4 **Risk of Loss.** The risk of loss of Solar Energy shall pass from Seller to Purchaser at the Point of Delivery.

## **ARTICLE 10: MONTHLY ENERGY-BASED PAYMENTS**

10.1 During the Term, Purchaser shall pay Seller a Monthly Energy-Based Payment for Solar Energy delivered to the Point of Delivery by Seller and Estimated Production, if any, during each Month.

10.2 The Monthly Energy-Based Payment does not include sales or other taxes that may be imposed on the receipt and use of Solar Energy at or from the Point of Delivery, and/or on the Monthly Energy-Based Payment. If any such taxes are

imposed in the future on the receipt and use of Solar Energy, such taxes shall be added to the Monthly Energy-Based Payment and paid by Purchaser.

10.3 Purchaser's obligation to pay the Monthly Energy-Based Payment shall commence on the Commencement Date of the Facility, provided that payments for energy delivered prior to the Commercial Operation Date shall be made pursuant to Section 9.1.1 of this Agreement.

## **ARTICLE 11: PAYMENT PROCEDURE**

### 11.1 **Billing and Payment.**

11.1.1 On or before the 15<sup>th</sup> Day of each Month during the Term, and any applicable Renewal Term, Seller shall provide Purchaser with an invoice stating the Monthly Energy-Based Payment calculated for the prior Month based upon the meter readings for such prior Month. Each invoice shall set forth in reasonable detail the calculation of all amounts owed to Seller.

11.1.2 Each Monthly payment shall be due and payable within sixty (60) Days after Purchaser's receipt of such invoice. Payment of an invoice shall be made via ACH payment or as otherwise specified in Seller's invoice. If payment is not made on an invoice within thirty (30) Days from Purchaser's receipt thereof, then interest at the Interest Rate shall be added to the overdue payment, from the date such overdue payment was due until such overdue payment together with interest is paid.

### 11.2 **Billing Disputes and Final Accounting.**

11.2.1 The Parties shall each have until the 365<sup>th</sup> Day after receipt of a Monthly invoice to question or contest the correctness of any charge or credit set forth in such invoice. If no question or contest is raised during such period, the correctness of all such charges and credits shall be conclusively presumed.

11.2.2 In the event a Party questions or contests the correctness of any invoiced amount, whether a charge or a credit, or of any payment claimed by the other Party to be due pursuant to this Agreement, such Party shall provide written notice to the other Party (the "**Billing Dispute Notice**") that: (i) states the good faith basis for the dispute, (ii) specifies the portion of the invoiced amount in dispute, if any, and (iii) provides documentation reasonably supporting the determination of the disputed amount. Payment of any amount of any such invoice that is not questioned or contested shall be paid within 30 Days of the date of the invoice.

11.2.3 In the event that a Party, by timely notice in accordance with Sections 11.2.1 and 11.2.2, questions or contests the correctness of any charge or credit, the other Party shall promptly review the questioned charge or credit and shall notify such Party, within 20 Days following receipt by the other Party of the Billing Dispute Notice, of the amount of any error and the amount of any reimbursement, if any, that such Party is entitled to receive with respect to such alleged error (the "**Dispute Review Notice**").

11.2.4 Reimbursements determined to be due from a Party under Section 11.2.3 shall be included on the next Monthly invoice and shall include interest from the date the original payment was received until the date such reimbursement together with interest is invoiced, which interest shall be compounded Monthly at the Interest Rate.

11.2.5 In the event a Party disputes the other Party's resolution under Section 11.2.4 of any question or contest by such Party of the correctness of any charge or credit contained

in a Monthly invoice, then the Parties shall submit the dispute for resolution in accordance with Article 18.

## **ARTICLE 12: REPRESENTATIONS, WARRANTIES AND COVENANTS**

**12.1 Seller Representations, Warranties and Covenants.** Seller makes the following representations, warranties and covenants as the basis for the benefits and obligations contained in this Agreement:

12.1.1 Seller is a limited liability company, duly organized and validly existing under the laws of the state of Georgia, with the legal power and authority to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

12.1.2. The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary corporate action, and do not and shall not require any consent or approval of any other entity other than that which has been obtained. Seller represents and warrants that it has the requisite power and authority under Applicable Law to enter into this Agreement and to perform its obligations hereunder. Seller further represents and warrants that the person signing this Agreement has the requisite power and authority to sign the Agreement and to bind Seller.

12.1.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, do not and shall not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of Applicable Law, or any partnership agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing.

12.1.4 Throughout the entire Term, Seller and all of Seller's Contractors (and their respective operating and maintenance personnel) are and shall be adequately qualified and trained throughout the Term. Seller and all of Seller's Contractors shall comply with all licensing, bonding, and insurance requirements of the State of Georgia.

12.1.5 Throughout the entire Term, unless otherwise specified by Purchaser, all materials and equipment supplied in connection with Seller's Work are and shall be new, suitable for the use intended, of the grade and quality specified, materially free from all defects in design, material, and workmanship, in substantial conformance with the samples, drawings, descriptions, and specifications furnished to Purchaser, and in material compliance with all Applicable Laws and the Final Construction Plans.

12.1.6 Throughout the entire Term, Seller and Seller's Parties shall comply with Purchaser's policies and rules, as may be updated from time to time and provided by Purchaser, regarding safety and security, workplace conduct, and information security.

**12.2 Purchaser Representations, Warranties and Covenants.** Purchaser makes the following representations, warranties and covenants as the basis for the benefits and obligations contained in this Agreement:

12.2.1 Purchaser is a limited liability company, duly organized and validly existing under the laws of the state of Georgia, with the legal power and authority to carry on its

business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

12.2.2 The execution, delivery and performance by Purchaser of this Agreement have been duly authorized by all necessary corporate action, and do not and shall not require any consent or approval of any other entity other than that which has been obtained. Purchaser represents and warrants that it has the requisite power and authority under Applicable Law to enter into this Agreement and to perform its obligations hereunder. Purchaser further represents and warrants that the person signing this Agreement has the requisite power and authority to sign the Agreement and to bind Purchaser.

12.2.3 The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, do not and shall not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of Applicable Law, or any partnership agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Purchaser is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing.

**12.3 Survival of Representations, Warranties and Covenants.** All representations, warranties and covenants made by Seller and by Purchaser in or under this Agreement shall survive the execution and delivery of this Agreement and any action taken pursuant hereto.

## **ARTICLE 13: EVENTS OF DEFAULT; REMEDIES**

**13.1 Default by Seller.** Any one or more of the following events shall constitute an Event of Default by Seller and shall give Purchaser the right to exercise the remedies specified in Section 13.3:

13.1.1 Seller fails to pay Purchaser any undisputed amount payable by Seller to Purchaser pursuant to this Agreement for thirty (30) Days after the same shall have become due and payable, and Seller fails to cure such failure to pay within thirty (30) Days after receipt of written demand therefor from Purchaser.

13.1.2 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Seller in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order, which was sought by an entity other than Seller, adjudicating Seller bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Seller under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Seller or of any substantial part of its affairs.

13.1.3 Seller shall: (i) commence a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated as bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect of Seller in any involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) file any petition, answer or consent seeking reorganization or relief under any applicable federal or state law, which, if granted would have the effect of relieving Seller of any of its

obligations; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Seller or of any substantial part of its property; or (v) make an assignment for the benefit of creditors.

13.1.4 Any material representation or warranty made by Seller herein shall prove to be incorrect in any material respect when made, unless Seller shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Seller by Purchaser (unless such cure is not capable of being effected within such thirty (30) Day period in which case Seller shall have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on Purchaser of such representation or warranty having been incorrect.

13.1.5 Seller assigns or transfers its rights under this Agreement in violation of Section 19.1 hereof or any lender or other party providing financing to Seller for the Facility forecloses on the Facility without having previously acknowledged in writing that it agrees to be bound by all of Seller's obligations under this Agreement.

13.1.6 Seller fails to perform any obligation under the Interconnection Agreement that Seller has explicitly agreed to assume, which (a) causes a material breach of the Interconnection Agreement, (b) continues past the expiration of any cure period provided in the Interconnection Agreement, and (c) adversely affects the operation of the Facility covered by the Interconnection Agreement.

13.1.7 Seller fails to achieve the Commercial Operation Date for the Facility by the Longstop Commercial Operation Date.

13.1.8 Seller fails to perform or comply with any other material terms and conditions of this Agreement other than those listed in Sections 13.1.1 through 13.1.7 and fails to conform to said terms and conditions within thirty (30) Days after a written demand by Purchaser to do so.

13.2 **Default by Purchaser.** Any one or more of the following events shall constitute an Event of Default by Purchaser and shall give Seller the right to exercise the remedies specified in Section 13.3:

13.2.1 Purchaser fails to pay Seller any undisputed amount payable by Purchaser to Seller pursuant to this Agreement for thirty (30) Days after the same shall have become due and payable, and Purchaser fails to cure such failure to pay within thirty (30) Days after receipt of written demand therefor from Seller.

13.2.2 A court having jurisdiction shall enter: (i) a decree or order for relief in respect of Purchaser in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law; or (ii) a decree or order adjudicating Purchaser bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Purchaser under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of Purchaser or of any substantial part of its affairs.

13.2.3 Purchaser shall: (i) commence a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated as bankrupt or insolvent; (ii) consent to the entry of a decree or order for relief in respect

of Purchaser in any involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (iii) file any petition, answer or consent seeking reorganization or relief under any applicable federal or state law, which, if granted would have the effect of relieving Purchaser of any of its obligations; (iv) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Purchaser or of any substantial part of its property; or (v) make an assignment for the benefit of creditors.

13.2.4 Any material representation or warranty made by Purchaser herein shall prove to be incorrect in any material respect when made, unless Purchaser shall promptly commence and diligently pursue action to cause such representation or warranty to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to Purchaser by Seller (unless such cure is not capable of being effected within such thirty (30) Day period in which case Purchaser shall have an additional thirty (30) Day period in which to perform such cure as long as such cure is pursued with diligence) and such cure removes any material adverse effect on Seller of such representation or warranty having been incorrect.

13.2.5 Purchaser assigns or transfers its rights under this Agreement without complying with the requirements of Sections 4.6.1 and 19.1.

13.2.6 Purchaser or Purchaser's Parties fail to preserve the locations necessary for the siting of the Facility and its connection to Purchaser's Electric System as established during and prior to the Design Phase such that Seller is unable to construct the Facility in accordance with the Final Design Package.

13.2.7 Purchaser fails to perform any obligation under the Interconnection Agreement that Purchaser has explicitly agreed to assume, which (a) causes a material breach of the Interconnection Agreement, (b) continues past the expiration of any cure period provided in the Interconnection Agreement, and (c) adversely affects the operation of the Facility.

13.2.8 Purchaser fails to perform or comply with any other material terms and conditions of this Agreement other than those listed in Sections 13.2.1 through 13.2.7 and fails to conform to said terms and conditions within 30 Days after a written demand by Seller to do so.

13.3 **General Remedies for Events of Default.** Upon an Event of Default, the non-defaulting Party, without limiting the rights or remedies available under this Agreement (including, without limitation, pursuant to Sections 13.4 and 13.5 hereof), Applicable Law or in equity, shall have the right:

i. by written notice to the defaulting Party, to designate an Early Termination Date with respect to this Agreement, which Early Termination Date shall be a date not earlier than the date of such notice and not later than thirty (30) Business Days after such date;

ii. to withhold any payments due to the defaulting Party under this Agreement until such Event of Default is resolved; and

iii. to suspend performance due to the defaulting Party under this Agreement until such Event of Default is resolved. If the Event of Default is resolved, all withheld payments and performance shall be made within thirty (30) Days of said resolution. If the non-defaulting Party designates an Early Termination Date, this Agreement will terminate as of



the Early Termination Date. Any payments due by either Party to the other Party shall be made within thirty (30) Days of the Early Termination Date. For avoidance of doubt, no Early Termination Fee shall be payable by Purchaser in the event Purchaser designates an Early Termination Date due to a default by Seller.

**13.4 Additional Purchaser Rights Upon Termination for Event of Default.** If Purchaser is the non-defaulting Party, and Purchaser elects to terminate this Agreement as provided in Section 13.3, Purchaser also shall be entitled to:

i. require that Seller Decommission the Facility, at Seller's sole risk, cost and expense (or to remove and have stored the Facility at Seller's sole risk, cost and expense, if Seller fails to commence to remove the Facility within 120 Days after the Early Termination Date); or

ii. to require that title to the Facility be transferred to Purchaser in accordance with Section 4.1.2(ii) upon payment of Fair Market Value of the Facility. Nothing in this Section 13.4 shall abridge or limit the remedies otherwise available to Purchaser under the Uniform Commercial Code, federal, and state law in an Event of Default by Seller.

**13.5 Additional Seller Rights Upon Termination for Event of Default.**

13.5.1 If Seller is the non-defaulting Party and elects to terminate this Agreement as provided in Section 13.3, and if such termination is effective before the expiration of the Term, then Purchaser shall pay the Early Termination Fee to Seller within sixty (60) Days of the date of Seller's notice of default hereunder.

13.5.2 Seller shall provide its calculation of the Early Termination Fee to Purchaser within thirty (30) Days of the date of Seller's notice of default hereunder. It is agreed that the Early Termination Fee provided herein is a reasonable estimate of Seller's actual damages for Purchaser's default, which would be extremely difficult to calculate at the time of default.

13.5.3 Seller shall additionally be entitled to Decommission the Facility at Purchaser's sole cost and expense (within one hundred and twenty (120) Days of the effective date of Seller's notice of default). Purchaser shall pay to Seller all of Seller's costs of such Decommissioning within thirty (30) Days of Seller's invoice to Purchaser for such costs; provided, however, that any cost to repair damage to the Facility Site or the Property caused by Seller's negligence during such Decommissioning shall be at Seller's sole risk, cost and expense.

**13.6 Limitation of Remedies, Liability and Damages.** UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE, EXCEPT FOR ANY SUCH DAMAGES AWARDED TO A THIRD PARTY IN A CLAIM INDEMNIFIED BY ONE OF THE PARTIES HERETO. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES AGREE THAT IN THE EVENT THAT ANY TAX CREDITS CLAIMED OR RECEIVED BY SELLER (OR ITS TAX INVESTORS) WITH RESPECT TO THE FACILITY ARE RECAPTURED AS A RESULT OF A BREACH OF THIS AGREEMENT BY PURCHASER, AND THE RECAPTURE IS DIRECTLY AND CAUSALLY RELATED TO PURCHASER'S

BREACH, THE RECAPTURED AMOUNT SHALL BE DEEMED TO BE DIRECT AND NOT INDIRECT OR CONSEQUENTIAL DAMAGES.

**13.7 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER'S WORK, THE OPERATIONS, AND ALL OTHER SERVICES PROVIDED TO PURCHASER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS" AND "WHERE-IS." NO OTHER WARRANTY TO PURCHASER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE FACILITY, SELLER'S WORK, THE OPERATIONS, OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY SELLER.

PURCHASER MAKES NO REPRESENTATION OR WARRANTY AS TO THE LEVEL OF PAST, PRESENT OR FUTURE ENERGY CONSUMPTION AT THE PROPERTY OR THE FACILITY SITE. NOR SHALL ANY PROVISION OF THIS AGREEMENT REQUIRE PURCHASER TO CONTINUE TO OPERATE THE PROPERTY OR THE FACILITY SITE OR RESTRICT PURCHASER'S RIGHTS TO SELL, LEASE OR DISPOSE OF THE PROPERTY, PROVIDED THAT PURCHASER COMPLIES WITH THE TERMINATION REQUIREMENTS IN THIS AGREEMENT.

#### ARTICLE 14: COMPLIANCE WITH LAWS

**14.1 Compliance.** Seller represents, warrants and covenants that throughout the Term and any Renewal Term Seller shall (i) be in compliance with Applicable Law with respect to the design, construction, ownership, operation and maintenance of the Facility, including all required Consents, and (ii) pay all costs, expenses, charges and fees in connection therewith.

**14.2 Approvals.** Seller and Purchaser each agree to use all reasonable efforts to apply for promptly and to pursue diligently any required acceptances or approvals from Governmental Authorities for the consummation of the transactions contemplated by this Agreement or for the giving of effect to the expiration of this Agreement or any termination of this Agreement. This provision is not intended to subject this Agreement to the jurisdiction of any Governmental Authority that does not have such jurisdiction over this Agreement as of the Effective Date.

#### ARTICLE 15: INDEMNIFICATION

**15.1 Scope of Indemnity.** Each Party (the "Indemnifying Party") expressly agrees, to the fullest extent of the law, to indemnify, reimburse, hold harmless and defend the other Party and its Affiliates, trustees, agents, officers, directors, employees, members and permitted assigns (the "Indemnified Party") from and against all Losses (on an after-tax basis) imposed by Governmental Authorities or arising from loss, damage or injury to the person or property of third parties in any manner directly or indirectly related to: (i) acts and omissions in connection with its performance, or failure thereof, of obligations or representations and warranties under this Agreement; or (ii) any other activities to the extent that they involve the negligence or willful misconduct of the Indemnifying Party, provided that the Indemnifying Party shall not be liable to indemnify the Indemnified Party to the extent such loss, damage or injury is the result of the negligence or willful misconduct of the Indemnified Party. Without limiting the foregoing, Seller's obligations as an Indemnifying Party hereunder shall include, without limitation, any Loss incurred



by Purchaser that is caused by, arising out of, or related to an act or omission associated with the Facility or any Interconnection Agreement related to the Facility between Purchaser and the Utility Provider (whether arising in the ordinary course or as a result of any default hereunder). Seller shall not, however, be required to reimburse or indemnify Purchaser Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Purchaser Indemnified Party.

**15.2 Notice of Proceedings.** An Indemnified Party that becomes entitled to indemnification under this Agreement shall promptly notify the other Party of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation except to the extent failure to provide notice adversely affects the Indemnifying Party's interests.

**15.3 Defense Rights.** The Indemnifying Party shall assume the defense of the Indemnified Party with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the expense of the Indemnifying Party.

**15.4 Settlement Rights.** If the Indemnifying Party fails to assume the defense of a claim the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

## ARTICLE 16: INSURANCE

**16.1 Insurance Required.** During the Term, each Party shall acquire and maintain at its sole cost and expense the types and amounts of insurance coverage as are consistent with Prudent Industry Practices but in no event less than the types and amounts described in Appendix H and this Article 16. Each Party may, in its sole discretion, require the other Party to deliver, at any time during the Term, but at least 30 Days after the Execution Date, a certificate of insurance certifying coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the state of Georgia naming the requesting Party as an additional named insured.

**16.2 General Liability Insurance.** The insurance policy providing such coverage shall provide general liability insurance, including property damage, in the amounts shown in Appendix H, which can be exceeded. The required insurance policy shall be endorsed with a provision requiring the insurance company to notify the other Party at least 60 Days prior to the effective date of any cancellation. Each party agrees to notify the other Party at least 60 Days prior to the effective date of any known material change in the policy.

**16.3 No Waiver of Liability.** The provisions requiring insurance under this Agreement shall not be construed as a waiver, restriction or limitation of any liability imposed on a Party under this Agreement, whether or not the same is

covered by insurance. It is the intent of the Parties, however, that to the extent there is insurance coverage available to cover the legal and contractually assumed liability of a Party, any payments due as a result of such liability shall be made first from the proceeds of such policies.

## ARTICLE 17: FORCE MAJEURE

### 17.1 Definition of Force Majeure Event.

**17.1.1** A "Force Majeure Event" as to a Party means any occurrence, nonoccurrence or set of circumstances that prevents that Party, in whole or in part, from performing any of its obligations or satisfying any conditions under this Agreement and that is beyond the reasonable control of such Party and is not caused by such Party's negligence or fault. Force Majeure shall include an act of God; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out that is not site-specific to and at the Facility; epidemics and pandemics; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); failures or delays by the Utility Provider in entering into, or performing under any Interconnection Agreement; unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies, products or services outside of the Party's control or due to a Force Majeure Event.

**17.1.2** Force Majeure shall also include (to the extent beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure) any interruption in interconnection service on either side of the Point of Delivery or any failure on the part of any third party to take any action necessary to enable the Facility to interconnect with and deliver power to the Point of Delivery.

**17.1.3** No Party shall be deemed to have suffered a Force Majeure Event due to the failure of equipment which that Party or its agent or contractor is responsible for operating or maintaining unless the equipment has been operated and maintained in accordance with Prudent Industry Practices.

**17.2 No Breach or Liability.** Either Party shall be excused from performance of its obligations hereunder, other than payment obligations that accrued prior to the declaration of the Force Majeure Event, and shall not be construed to be in default in respect of such obligations to the extent that, and for so long as, failure to perform such obligations is due to a Force Majeure Event.

### 17.3 Mitigation.

**17.3.1** Following the occurrence of a Force Majeure Event, the affected Party shall give the other Party notice thereof, followed by written notice if the first notice is not written, as promptly as possible after such Party becomes aware of such Force Majeure Event, describing the particulars of such Force Majeure Event.

**17.3.2** The Affected Party shall remedy its inability to perform as soon as reasonably practicable; provided, however, that this Section 17.3 shall not require the settlement of any non-site specific strike, walkout, lockout or other general labor dispute on terms which, in the reasonable judgment of the Party involved in the dispute, are contrary to its interest.

**17.4 Suspension of Performance.** The suspension of performance due to a Force Majeure Event shall be of no

greater scope and of no longer duration than is required by such Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond the stated Term.

#### 17.5 Casualty and Condemnation.

17.5.1 Casualty. If the Facility Site is damaged such that substantial alteration or reconstruction of the Facility Site shell, in Purchaser's reasonable opinion, is required (whether or not the Facility itself shall have been damaged by such Casualty), and Purchaser reasonably determines that such Casualty would take more than one hundred eighty (180) Days to repair, either Purchaser or Seller may, at its option, terminate this Agreement as to the Facility or Facilities affected by the Casualty by notifying the other Party in writing of such termination within ninety (90) Days after the date of such Casualty. If neither Purchaser nor Seller elects to terminate this Agreement in such event, Purchaser shall commence and proceed with reasonable diligence to restore the Facility Site shell and shell improvements in which the applicable Facility is located or other portion of Purchaser's Property. Purchaser shall not be liable for any inconvenience, interruption or annoyance to Seller or injury to the business of Seller resulting in any way from such damage or the repair thereof, except to the extent that the damage to the Facility Site was caused by the negligence or intentional act of the Purchaser. The applicable Monthly Energy-Based Payment shall abate from the date of the Casualty through the earlier of (i) the date Seller may commence use of the Facility at the Facility Site; and (ii) the date Seller completes, to the extent required hereby, restoration of the applicable Facility.

17.5.2 Condemnation. If all or substantially all of the Facility Site (or other portions of Purchaser's Property reasonably necessary for the intended use of such Facility Site) shall be taken for any public or quasi-public use, by right of eminent domain or otherwise, or shall be sold in lieu of condemnation, then this Agreement shall automatically terminate as to that Facility Site as of the date when physical possession of the Facility Site or such other portions of Purchaser's Property is taken by the condemning authority. If less than all or substantially all of the Facility Site or such other reasonably necessary portions of Purchaser's Property is thus taken or sold (a "Partial Condemnation") and either: (i) Purchaser reasonably determines that such Partial Condemnation has made it commercially impractical for Purchaser to honor the terms of this Agreement as to that Facility Site; or (ii) Seller reasonably determines that as a result of such Partial Condemnation it can no longer effectively operate the Facility or supply Solar Energy pursuant to this Agreement from that Facility, then such party may terminate this Agreement as to the Facility involved by giving written notice thereof to the other, in which event this Agreement shall terminate as to that Facility as of the date when physical possession of such portion of the Facility Site or such other portions of Purchaser's Property is taken by the condemning authority or the date that Seller has removed the Facility. If this Agreement is not so terminated as to the subject Facility upon any such Partial Condemnation, Purchaser shall restore the applicable Facility Site or such other portions of Purchaser's Property to substantially its former condition. All amounts awarded upon a taking of any part or all of Purchaser's Property or Facility Site shall belong to Purchaser, and Seller shall not be entitled to and expressly waives all claims to any such compensation. Seller, however, shall have the right to pursue a separate award from the condemning authority (but not from Purchaser) for such compensation as may be recoverable by Seller in its own right for moving expenses and Facility equipment owned by Seller.

## ARTICLE 18: DISPUTE RESOLUTION

18.1 Dispute Resolution Generally. Except as set forth in Section 11.2, and subject to Section 18.2, any and all controversies, disputes or claims arising out of, relating to, in connection with or resulting from this Agreement (or any written amendment hereto), including as to its interpretation, performance, non-performance, validity, breach or termination, and including any claim based on contract, tort, regulation, rule, statute or constitution and any claim raising questions of law, whether arising before or after termination of this Agreement (individually "Claim" and collectively "Claims"), shall be resolved pursuant to the terms of this Article 18 by litigation in the federal or state courts situated in Fulton County, Georgia.

#### 18.2 Initiation of Dispute Resolution.

18.2.1 Prior to initiating any litigation hereunder, a Party wishing to make any Claim ("Disputing Party") shall provide the other Party ("Responding Party") with a formal, written notice of the dispute for each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "Notice of Dispute"). Within 30 Days after receiving the Notice of Dispute, the Responding Party shall provide the Disputing Party with a written notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "Dispute Response").

18.2.2 Within 15 Days after the submission of the Dispute Response, the Claim shall be submitted to a designated senior representative of Seller and a designated senior representative of Purchaser for resolution. If the designated senior representatives are unable to resolve the Claim to the mutual satisfaction of the Parties within 30 Days from the submission to such designated senior representatives, or such other period as the Parties may agree upon, then either Party may provide written notice to the other declaring an impasse (the "Impasse Notice") and initiating litigation proceedings.

18.3 Injunctive Relief. Notwithstanding any other provision of this Article 18, the Parties agree that a Party threatened with irreparable harm shall be permitted to seek at any time, in accordance with Applicable Laws, procedures, and the terms of this Agreement, injunctive relief relating to the performance of this Agreement from a Governmental Authority of appropriate jurisdiction. In addition, either Party may seek to enforce specifically the other Party's payment obligations hereunder, including a right to seek any and all unrecovered damages and expenses and other losses, costs and liabilities (including reasonable attorneys' fees and expenses incurred or suffered by the first Party) as a result of or in connection with any payment default hereunder by the other Party.

18.4 Continued Performance. The Parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved unless and until such obligations are terminated or expire in accordance with the provisions of this Agreement.

18.5 Liquidated Damages. The Parties acknowledge and agree that: (i) Seller's actual damages would be difficult to determine in the event of a termination by Seller pursuant to Section 13.3 because of an Event of Default by Purchaser; (ii) the Early Termination Fee represents a good faith estimate of Seller's probable damages in the event of any such Event of Default by Purchaser; (iii) the Early Termination Fee is just, fair and reasonable and is not intended to be punitive or a penalty; and (iv) the Early Termination Fee is intended to and does

liquidate the amount of damages due Seller in the event of any such Event of Default by Purchaser.

## **ARTICLE 19: MISCELLANEOUS**

### **19.1 Assignment, Transfers and Changes of Control.**

19.1.1 Collateral Assignment. Purchaser acknowledges that Seller may be financing the construction and operation of the Facility through a Financing Party, and that Seller may assign the Facility and/or may secure Seller's obligations to a Financing Party without Purchaser's prior consent by a pledge or collateral assignment of this Agreement and a first security interest in the Facility (a "Collateral Assignment"); provided, however, that such Collateral Assignment shall in no way constitute an amendment to this Agreement; shall not relieve Seller from its obligations under this Agreement; shall in no way limit Purchaser's rights under this Agreement; and shall not expand the liability, risks or obligations imposed on Purchaser under this Agreement.

19.1.2 Affiliate Assignment; Changes of Control. Either Party may without further notice assign this Agreement to an Affiliate or designate one or more Affiliates to perform its obligations under this Agreement. Each Party may without the other Party's prior written consent assign this Agreement in connection with a Change of Control Transaction provided that said Party shall give the other Party written notice of such Change of Control Transaction within thirty (30) Days thereof.

19.1.3 Except as permitted under Sections 19.1.1 and 19.1.2 hereof, neither Party may assign this Agreement or any portion thereof to any Person without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed.

19.1.4 Any proposed assignee of this Agreement, except those receiving assignments under of Sections 19.1.1 or 19.1.2, shall (i) provide at least ten (10) Days' advance written notice of such proposed assignment; (ii) agree in writing to assume assignor's obligations hereunder; (iii) deliver to the other Party such written assurances regarding its creditworthiness and its ability to perform all obligations of the assignor hereunder, as the other Party may reasonably request; and (iv) cooperate with the other Party to comply with any Applicable Laws. Any assignment of this Agreement made in compliance with the preceding sentences shall constitute an acceptance and assumption of such obligations by the assignee, a novation of the assignee in place of the assignor with respect to such obligations (and any related interests so transferred), and a release and discharge by the other Party of the assignor from, and an agreement by the other Party not to make any claim for payment, liability, or otherwise against the assignor with respect to, such obligations from and after the effective date of the assignment.

19.2 General Requirements. Any consent required by Section 19.1.1 shall not be unreasonably withheld, conditioned or delayed; provided, however, that neither Party shall be required to accept any limitation of its rights under this Agreement or expansion of the liability, risks or obligations imposed on it under this Agreement (including changes in accounting treatment). It shall be reasonable for either Party to condition its consent required by this Article 19 on the execution of amendments to this Agreement that are reasonably determined by such Party to be necessary to preserve the value and protection afforded to such Party under this Agreement.

19.3 Relation of the Parties. The relationship between Seller and Purchaser shall not be that of partners, agents, or joint venturers, and nothing contained in this Agreement shall be deemed to create any joint venture, partnership, association

taxable as a corporation, or other entity for the conduct of any business for profit. Seller and Purchaser, in performing their obligations under this Agreement, shall be independent contractors or independent parties and shall discharge their obligations at their own risk. Unless otherwise stipulated in this Agreement, Seller shall have no authority to enter into agreements on behalf of Purchaser, to bind or obligate Purchaser in any manner to any third party, or to represent itself as the agent of Purchaser in any way.

19.4 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon any respective successors and permitted assigns of Seller and Purchaser.

19.5 No Third-Party Benefit. Nothing in this Agreement shall be construed to create any duty, obligation or liability of either Party to any person or entity not a party to this Agreement.

19.6 Time of Essence; No Waiver. Time is of the essence of this Agreement. Neither Purchaser's nor Seller's failure to enforce any provision or provisions of this Agreement shall in any way be construed as a waiver of any such provision or provisions as to any future violation thereof, nor prevent it from enforcing each and every other provision of this Agreement at such time or at any time thereafter. The waiver by either Purchaser or Seller of any right or remedy shall not constitute a waiver of its right to assert said right or remedy, at any time thereafter, or any other rights or remedies available to it at the time of or any time after such waiver.

### **19.7 Amendments; Additional Sites; Facility Upgrades.**

19.7.1 This Agreement may be amended by and only by a written instrument duly executed by both Parties.

19.7.2 Added Facilities. Seller and Purchaser may agree in the future to have this Agreement apply to and govern an Added Facility at the same Facility Site or an Added Facility Site by executing an Addendum to this Agreement that specifies the Added Facility, the applicable Facility Site, the applicable Contract Energy Price, and such other specific terms as they deem necessary; in which case, all provisions of this Agreement applicable to the Facility will be deemed to apply to the Added Facility and all provisions of this Agreement applicable to the Facility Site will be deemed to apply to any Added Facility Site, unless specifically stated otherwise in the Addendum.

19.7.3 Facility Upgrade(s). The Facility may be upgraded during the Term and any Renewal Term upon mutual agreement of the Parties as to scope and price by executing an Addendum to this Agreement that specifies the Facility Upgrade, the applicable Contract Energy Price, and such other specific terms as they deem necessary. For avoidance of doubt, a Facility Upgrade for purposes of this Section 19.7.3 shall not include routine maintenance, including the repair or replacement of defective modules or other equipment as needed to maintain the Facility in good working condition in accordance with Prudent Industry Practices, which routine maintenance obligations Seller shall perform throughout the Term pursuant to Section 7.4.2(ii) at no additional cost to Purchaser.

19.8 Notice. Any notice, request, consent or other communication permitted or required by this Agreement shall be in writing and shall be deemed given on the Day hand-delivered or electronically delivered to the officer identified below, or the third Day after the same is deposited in the United States Mail, first class postage prepaid, and if given to Purchaser shall be addressed to:

Beauflor USA LLC  
One Beauflor Way

White, GA 30184  
Attention: Teun Andeweg  
Email: [Teun.Andeweg@beaufior.us](mailto:Teun.Andeweg@beaufior.us)

and if given to Seller shall be addressed to:

Cherry Street Asset Management Holdings, LLC  
1000 Marietta Street NW, #290  
Atlanta, GA 30318  
Attention: Michael Chanin  
Email: [michael@cherrystreetenergy.com](mailto:michael@cherrystreetenergy.com)

With copies to:

Seyfarth Shaw LLP  
1075 Peachtree Street NE  
Atlanta, Georgia 30309-3962  
Attention: Steven Richman, Esq.  
Email: [srichman@seyfarth.com](mailto:srichman@seyfarth.com)

unless Purchaser or Seller shall have designated a different officer or address for itself by written notice to the other.

**19.9 Counterparts; Electronic Signatures.** This Agreement may be executed by the Parties in separate counterparts, including by "portable document format" ("pdf") or electronic signatures, each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart of the signature page to this Agreement by pdf shall be as effective as delivery of a manually executed counterpart of this Agreement and shall be given full legal effect in accordance with the Uniform Electronic Transactions Act.

**19.10 Cross-References.** All cross-references contained in this Agreement to Sections, are to the Sections of this Agreement, unless otherwise expressly noted.

**19.11 Article and Section Headings.** The descriptive headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

**19.12 Governing Law: Forum for Disputes.** The validity, interpretation and performance of this Agreement, and each of its provisions, shall be governed by the laws of the state of Georgia. The Parties agree that the state and federal courts, as applicable, of the state of Georgia shall have exclusive jurisdiction for any litigation for the resolution of disputes under this Agreement.

**19.13 Confidentiality.** The Parties' May 26, 2024 Mutual Confidentiality Agreement, as amended, is incorporated herein.

**19.14 Liability.** Neither Party shall be responsible for the other Party's performance, non-performance or delay in performance under this Agreement.

**19.15 Entire Agreement.** This Agreement (including the attached Appendices A through J) constitutes the entire understanding between the Parties and supersedes any previous agreements between the Parties. The Parties have entered into this Agreement in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein.

**19.16 Severability.** In the event any term or provision of this Agreement or the application thereof to any person, entity,

or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**19.17 Publicity.** Seller shall have the right to publish on its website or otherwise make public or distribute factual information related to the Facility, including but not limited to, the location of the Facility, the name of the Purchaser, and other features of the Facility.

## ARTICLE 20: CHANGE IN LAW

**20.1 Definition.** A "Change in Law" means (i) the enactment, adoption, promulgation, modification or repeal after the effective date of any Applicable Law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the effective date (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

**20.2 Impacts of Change in Law.** If either Party determines that a Change in law has occurred or will occur that has or will have a material adverse effect on that Party's rights, entitlement, obligations or costs under this Agreement, then said Party may so notify the other Party in writing of such Change in Law. Within 30 Days following receipt by the other Party of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such 30-Day period, then either Party may terminate this Agreement following which the Seller shall remove the Facility and restore the premises in accordance with this Section without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.

**20.3 Illegality or Impossibility.** If a Change in Law renders this Agreement, or either Party's performance of this Agreement, either illegal or impossible, then either Party may terminate this agreement immediately upon notice to the other without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.